

# **TRANSITIONAL JUSTICE IN IRAN**

## **Roadmap**

2024



## **Executive Summary**

A Sponsor Group of Iranian human rights advocates dedicated to promoting human rights in Iran initiated the development of a politically neutral, data-driven roadmap to assist the Iranian public and future government in implementing a transition process to a more equitable and just society. The Sponsor Group believes that a successful transition and respect for human rights in Iran requires a thorough and inclusive process of transitional justice, and this roadmap will provide a framework for achieving this goal. The Sponsor Group requested international law, policy and transitional justice experts to develop a roadmap that would focus on challenges arising during the transition period, on a pro bono basis, with the support of an Iranian Review Committee.

Being a multifaceted process, any transitional justice process in Iran will require the transition government to consider several different factors in several different areas. The roadmap addresses the multidimensional nature of this peaceful transition through the lenses of global comparative state practice and contextual analysis. Previous instances of popular demonstrations and revolutionary movements, such as the Arab Spring have underlined the importance of having a clearly articulated strategy for transitional justice that guides countries emerging from autocratic governments responsible for mass human rights violations through their transition to a democratic government. To achieve a clear and widely endorsed plan the roadmap examines the comparative state practice in over 42 countries from diverse regions across Asia, Europe, Africa, North and South America. In addition to that, the roadmap acknowledges the importance of an accurate contextual analysis to understand the specific challenges that arise in the context of transitional justice in Iran and develop a roadmap that is a relevant, adequate and concise strategy for transition.

The authors use this combination of comparative state practice and contextual analysis to identify key issues that emerge in the context of transitional justice and then explore strategies for addressing these challenges in the Iranian setting. The key areas of intervention are: Justice and Accountability, Constitution and Public Policy, Government, Judiciary and Administration, Women and Transitional Justice, Environment and Transitional Justice, Security and Armed Forces, Trade and Economy, and International Relations. For each of them, the authors discuss lessons learned and relevance for the Iranian context providing concrete and practical recommendations to ensure a safe and well-thought transition to a more equitable and just society.

Overall, this roadmap serves as a mapping of key transitional justice issues and important considerations for fair and inclusive transition that may need to be taken into account should Iran embark on a transitional justice process. By no means, this project aims to catalyze transition through its implementation.

## **Statement of Purpose**

This roadmap has been developed by a Sponsor Group and a Consultant Group. The Sponsor Group is composed of Iranian individuals dedicated to promoting human rights in Iran. The Consultant Group is composed of international specialists in transitional justice and legal experts. After the widespread protests that took place in Iran fueled by the death of Mahsa (Jina) Amini, the Sponsor Group conceptualized the need to have an expertly developed, data-driven, and politically inclusive transitional justice roadmap. The Sponsor Group requested the Consultant Group to work together and develop a roadmap that would focus on challenges arising during the transition period. The roadmap was developed with the aim of providing practical support to the Iranian public and any potential future transition government to implement an effective transitional justice process that will guide Iran towards a more just and equitable society.

The Sponsor Group believes that a successful transition and respect for human rights in Iran requires a thorough and inclusive process of transitional justice, and this roadmap will provide a framework for achieving this goal. As such, the transitional justice roadmap does not address a specific political actor, but the Iranian community as a whole in its intent to achieve a fair and inclusive transition by identifying practical and effective measures that a transition government would need to take into account in the potential transition of Iran.

Being a multifaceted process, any transitional justice process in Iran will require the transition government to consider several different factors in several different areas. After providing an overview of typologies of transitional justice and key actors and issues, the drafters identified seven main areas and developed the structure of the roadmap accordingly: (a) transitional justice (b) justice & accountability (c) constitution & public policy (d) government, judiciary and administration (e) women & transitional justice (f) environment & transitional justice (g) security and armed forces (h) trade and economy (i) international relations. For each sector, the authors took into account the unique historical and cultural context of Iran and provided an analysis of the main underlying challenges, based on those contextual considerations and comparative state practice.

The analysis and recommendations of each section should not be viewed as isolated from each other but as part of a comprehensive strategy for transition to a democratic state.

Due to this complexity, this document contains both high-level overviews of relevant considerations for a transition government as well as more in-depth explanations of the factors that may influence a decision regarding each consideration.

## Disclaimer

This Roadmap is **not** intended to catalyze transition through its implementation but rather serves as **a mapping of key transitional justice issues** and important **considerations for fair and inclusive transition** that may need to be taken into account should Iran embark on a transitional justice process.

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## Terminology

For the purposes of this document the following definitions are used.

Accountability: Accountability is a judicial process in which an individual responsible for committing atrocities is held liable through a legal mechanism, whether it be a domestic, regional, or international court or tribunal.

Amnesty: Under international law, amnesty is a concept of offering a perpetrator of international crimes an excusal from prosecution in exchange for a full and truthful account of what he or she did to a victim or group of victims, and sometimes for issuing a formal apology. Amnesties are often granted for those who come forward in truth and reconciliation commissions.

Atrocities: The terms “atrocities” or “atrocities crimes” is used to describe three international crimes (otherwise, sometimes known as core international crimes) that are recognized and defined by law. They are genocide, crimes against humanity, and war crimes. The legal definitions of these crimes can be found in several international treaties, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and their 1977 Additional Protocols, and the 1998 Rome Statute of the International Criminal Court. The definition of core international crimes, as formulated in these treaties, is also well established in customary international law.

Civil unrest: This term generally refers to disruption characterized by protests, demonstrations, strikes, riots, or other disruptive activities, used to express public dissatisfaction (often of particular groups) or grievances against the government, political system, or other influential groups.

Lustration: This term is understood as a process that precludes a certain group of individuals from serving in the post-conflict or transitional government based on their affiliations with the previous regime or criminal government.

Transition: This term is defined as the processes of socio-political change that includes participation of people from various social strata; different stages of social movements and nation-wide uprisings that are aimed at the profound systemic transformation of the political, economic, and cultural structures of the ruling regime.

Transition government: This term refers to a temporary administration put in place to manage a country during a period of political transition or instability. Transition governments typically have limited powers and are tasked with overseeing the drafting of a new constitution, organizing free and fair elections, and implementing reforms to strengthen democratic institutions. The goal of a transition government is typically to establish a stable and democratic government that can maintain the rule of law, protect human rights, and deliver basic services to citizens.

Transitional justice: This document refers to transitional justice as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”<sup>1</sup> Transitional justice consists of multiple transitional justice processes which are taken at different levels: the international efforts led by the United Nations (UN) and other international organizations, a cohesive national government response, and the engagement of the local community to help legitimize the process.

Transitional justice process: Refers to a comprehensive process of reforms and judicial and non-judicial actions aimed at leading a country towards peace and reconciliation. It may refer to one of the building blocks of the transition to a more just and stable society, such as the establishment of a domestic court, or to a more comprehensive plan of transition which consists of several actions and initiatives. Transitional justice processes are linked to four primary tenets of human rights law: (i) the state obligation to investigate and prosecute, (ii) the right to know the truth about past abuses, (iii) the right to reparations for victims of gross human rights violations, and (iv) the state obligation to prevent reoccurrence of atrocities.<sup>2</sup> The ultimate goal is to address past wrongs to achieve sustainable peace.<sup>3</sup>

Vetting: This term refers to a process that evaluates individuals on a case-by-case basis to determine their fitness for government service.

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<sup>1</sup> U.N. Hum. Rts. Office High Comm’r, *Transitional Justice and Economic, Cultural and Political Rights*, 5 (2014), available at <https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05.pdf>.

<sup>2</sup> U.N. Hum. Rts. Office High Comm’r, *Transitional Justice and Economic, Cultural and Political Rights*, 5 (2014), available at <https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05.pdf>.

<sup>3</sup> Aleksander Marsavelski and John Braithwaite, *Transitional Justice Cascades*, 53 Cornell Int’l L. J. 207, 211 (2020).

## Transitional Justice

The concept of transitional justice generally relates to the aspiration of a country to transition from repressive dictatorship to a more just and equitable society, often conceptualized as a more democratic state, and is based upon the well-established human rights principle that victims of gross human rights have a right to justice, truth, reparations, and guarantees of non-recurrence. For the purposes of this roadmap, the concept of democracy shall be understood considering the specific context of Iran and the aspirations of the Iranian community.

The roadmap acknowledges that it is wary of the risk of overlooking the reality and challenges specific to those communities undergoing transition, the role of non-state actors, including faith-based actors, the opposition of local actors to transition, and the need to rebuild or reform state institutions to promote redistribution of resources, tackle corruption and systems of discrimination, promotion of political representation, and participation of marginalized subjects (e.g., women and ethnic/religious minorities).<sup>4</sup>

Overall, all the identified risks are mitigated in this roadmap by a thorough analysis of the Iranian context and its specific challenges, by reliance on various sources, especially comparative state practice studies, by the engagement of Iranian civil society representatives in the review of the roadmap, and by the development of a comprehensive plan that does not only lay the foundations for a change of regime but also indicates potential peaceful pathways.

As transitional justice processes typically begin with a symbolic event that triggers the transition, it is important to understand the typologies of transition that exist and the Iranian context in which a transition may occur.

### *Typologies of Transition*

Transitions typically consist of two key phases: (1) regime change; (2) transition to a new form of governance. Each phase has its characteristics and challenges as discussed in this section. “Regime” is defined here as “a set of basic formal and informal rules for choosing leaders and policies.”<sup>5</sup>

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<sup>4</sup> Giada Girelli, *Understanding Transitional Justice: A Struggle for Peace, Reconciliation, and Rebuilding* (2017) pp. 232-233.

<sup>5</sup> Geddes, Barbara., Wright, Joseph., and Frantz, Erica., *Autocratic Breakdown and Regime Transitions: A New Data Set*. American Political Science Association. June 2014. Vol. 12, No. 2.

Regime change occurs when the “process of leader selection fundamentally changes from the prior arrangements.”<sup>6</sup> It is most likely that regime changes in non-democracies lead to new autocratic regimes; however, certain circumstances may lend itself to an autocratic regime transitioning to democracy. Such transitions “to democracy happen when an autocratic government is forced to surrender power and then subsequently replaced by a new government that initiates democratic reform or open elections.”<sup>7</sup>

Regimes are characterized by democratic or undemocratic norms. Democratic norms include fair, competitive elections, while undemocratic norms have a political system that is different.<sup>8</sup> Democracy, in its ideal form, “is a governing system based on the will and consent of the governed, institutions that are accountable to all citizens, adherence to the rule of law, and respect for human rights.”<sup>9</sup> Typically non-democracy categories include a variety of different autocratic regimes, whether such autocracies are military or party run or centered around an individual, sometimes called “personalist regimes.”<sup>10</sup>

Transitions begin with an autocrat or leader losing power. Power may be lost in different ways as discussed below.

### Autocrat Losing Power

There are four primary ways in which an autocrat may lose power: (1) through the actions or decisions of regime insiders (this includes coups, term limits, resignations or consensus of regime insiders in a politburo or military junta); (2) being forced out of office amid mass mobilization, including revolts and civil wars; (3) through foreign invasion or intervention; or (4) leaving office voluntarily or involuntarily due to death from natural causes.

### Regime Insiders

This type of loss of power includes the involuntary removal of an autocratic leader through the actions of regime insiders. Internal coups d'état have been the most common catalyst by which autocrats lose power since the 1950s.<sup>11</sup> An example of a coup d'état is the way in which Hafez al-Assad came to power in Syria in the 1970s (see Annex 1: Syria Case Study).

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<sup>6</sup> Choung, Jinhee Lee and Gleditsch, Kristian Skrede. *Autocratic Transitions and Democratization*. pp 2.

<sup>7</sup> Choung, Jinhee Lee and Gleditsch, Kristian Skrede. *Autocratic Transitions and Democratization*. pp 2.

<sup>8</sup> Geddes, Barbara., Wright, Joseph., and Frantz, Erica., *Autocratic Breakdown and Regime Transitions: A New Data Set*. American Political Science Association. June 2014. Vol. 12, No. 2.

<sup>9</sup> Freedom in the World 2022: The Global Expansion of Authoritarian Rule. Freedom House. February 2022, available at [https://freedomhouse.org/sites/default/files/2022-02/FIW\\_2022\\_PDF\\_Booklet\\_Digital\\_Final\\_Web.pdf](https://freedomhouse.org/sites/default/files/2022-02/FIW_2022_PDF_Booklet_Digital_Final_Web.pdf)

<sup>10</sup> Choung, Jinhee Lee and Gleditsch, Kristian Skrede. *Autocratic Transitions and Democratization*. pp 2.

<sup>11</sup> Kendall-Taylor, Andrea, Frantz, Erica. How Autocracies Fall. *The Washington Quarterly*. 37:1 pp. 35-47. Spring 2014. <http://dx.doi.org/10.1080/0163660X.2014.893172>



Hafez was a military leader and member of the existing government who consolidated power to overthrow the existing leader at that time. However, this category of transition can also include more naturally occurring shifts of power such as the voluntary resignation of a head of state or the impeachment of an autocratic leader through an act of parliament.

### Mass Mobilization

Between 1950-2012, only 7% of autocratic leaders were deposed through revolt. Examples include the overthrow of the Shah of Iran in 1979.<sup>12</sup> More recent examples are the cascading effects of the Arab Spring in 2010 and 2011, which served as a catalyst for the removal of leaders in Tunisia, Egypt, Libya, and Yemen (see Annex 1: Yemen Case Study).

### Foreign Intervention

Foreign intervention may lead to a leadership change where foreign powers or a coalition of the international community work together to remove an autocratic leader. Saddam Hussein was removed as the leader of Iraq through the invasion of the United States and its international coalition (see Annex 1: Iraq Case Study). This coalition sought to replace Saddam with a democratic infrastructure, which remains an ongoing transition. Similarly, the Taliban regime in Afghanistan was toppled within a matter of weeks after a United States-led military coalition launched attacks in the country in October 2001 (see Annex 1: Afghanistan Case Study).

### Autocrat Leaves Office

When an autocrat leaves office without falling into one of the above-listed categories, it is typically because such a leader dies or steps down. In the case of Syria, Bashar al-Assad came to power in 2000 following the death of his father, Hafez al-Assad, which led largely to the continuation of autocratic policies in Syria (see Annex 1: Syria Case Study).

### Transition Following Fall of Prior Autocrat

The time period during which an autocrat loses power provides an opportunity for the government to transition. An autocratic regime is often replaced by another autocratic regime, but this period also can offer a government fertile ground for transitioning to a democracy. Since World War II, 45% of leadership changes in autocracies have led to regime change whereby

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<sup>12</sup> Kendall-Taylor, Andrea, Frantz, Erica. How Autocracies Fall. The Washington Quarterly. 37:1 pp. 35-47. Spring 2014. <http://dx.doi.org/10.1080/0163660X.2014.893172>

more than 50% were transitions to other autocracies and less than 25% resulted in democratization.<sup>13</sup>

While it is most likely that autocratic regimes, even when there is a change in leadership, continue on in some form of autocracy rather than resulting in regime change, wholesale regime change sparked by protests is most common in personalist regimes. For example, Hussain Ershad in Bangladesh or Askar Akayev in Kyrgyzstan. In personalist regimes, leaders typically dismantle institutions that could constrain them or serve as power bases for challengers, and they tend to maintain a narrower base of support than leaders of other autocratic regime types. Therefore, when leaders of personalist dictatorships are removed, the relatively fragile underpinnings of their systems are likely to collapse. Insider led exits, in contrast, occur most frequently in more institutionalized regimes, such as military and dominant-party regimes, where institutional arrangements designed to ensure power-sharing help the regime endure leader transitions.<sup>14</sup>

When leaders are toppled by revolts, democracy follows almost 45% of the time, while successful coups lead to democracy 10% of the time. Revolts involve wide-scale participation by the population, who could then go on to become participants in a democracy. Coups, on the other hand, are typically executed by regime insiders who may have a vested interest in an autocratic structure continuing once the new leader is in charge. Overall, the participation of the population is an important component to support a democratic transition.

## Past Transitions in Iran: From the Constitutional Period to the Post-Revolution Period

The recent history of Iran contains examples of transitions although none to a democracy. An understanding of these transitions may help inform present strategies for a transition to democratic governance in Iran.

### From the Pahlavi Dynasty to Reza Khan

The Pahlavi dynasty was established in 1925, replacing the Qajar dynasty, after a coup d'état by military officer Reza Khan. Reza Khan aimed to transform Iran into a modern

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<sup>13</sup> Geddes, Barbara., Wright, Joseph., and Frantz, Erica., Autocratic Breakdown and Regime Transitions: A New Data Set. American Political Science Association. June 2014. Vol. 12, No. 2; Kendall-Taylor, Andrea, Frantz, Erica. How Autocracies Fall. The Washington Quarterly. 37:1 pp. 35-47. Spring 2014, available at <http://dx.doi.org/10.1080/0163660X.2014.893172>.

<sup>14</sup> Kendall-Taylor, Andrea, Frantz, Erica. How Autocracies Fall. The Washington Quarterly. 37:1 pp. 35-47. Spring 2014, available at <http://dx.doi.org/10.1080/0163660X.2014.893172>.

industrialized state and implemented a series of reforms, including changes to the judiciary, political and economic system, infrastructure, and education system. He also aimed to implement changes to the social and cultural life in Iran, including introducing a ban on headscarves in public, adopting Western-style clothing, and promoting the Persian language.

During the Pahlavi dynasty, political dissent and opposition was severely repressed. Freedom of expression and association were severely curtailed, and many individuals from opposition groups were arrested, tortured, or executed.<sup>15</sup> The dynasty faced opposition from leftists and other groups who sought to establish a republic. And while the modern educated elites in the cities might have welcomed the modernization policies and western dress codes, this aspect of the Pahlavi dynasty's ruling faced particular resistance from non-elite groups, traditionalists, and religious figures. In particular, members of the clergy were highly critical of Reza Shah's attempts to marginalize the role of the clergy and his interference with religious practices.<sup>16</sup>

Iran's relationships with foreign powers have played an important role in shaping the nation's history. The British maintained a dominant position in Iran's oil industry, up until growing tension between the states eventually led to the nationalization of oil in 1951. Other important trading partners during this period were France and Germany. After World War II, however, the United States gained larger influence in Iran. In particular, in 1953, the British and American intelligence instigated a coup d'état, led by the Iranian army, to overthrow Iran's government and the sitting Prime Minister Mohammad Mosaddegh. The 1953 coup d'état came as a response to the government's support for the nationalization of Iran's oil industry, the expulsion of foreign corporate representatives from the country and the fear that communist sentiments may spread in Iran. The coup ultimately served to strengthen the monarchical rule of the Shah, protect British oil interests in Iran and overall, strengthen the ties between the United States and the Shah.<sup>17</sup>

Reza Khan's successor, his son Mohammad Reza Shah Pahlavi, also introduced a series of reforms. On 26 January 1963, the Shah, Mohammad Reza Pahlavi launched the White Revolution which lasted until 1979. This revolution was characterized by major land reforms, privatization of government owned enterprises, the promotion of women's voting rights, and the implementation of a social security system. However, he also maintained an authoritarian form

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<sup>15</sup> Amnesty International Briefing: Iran (Nov. 1, 1976), available at <https://www.amnesty.org/en/documents/mde13/001/1976/en/>.

<sup>16</sup> Stephanie Cronin, *SOLDIERS, SHAHS AND SUBALTERN IN IRAN: OPPOSITION, PROTEST AND REVOLT, 1921-1941* 163 (Palgrave Macmillan London 2010).

<sup>17</sup> See Roham Alvandi & Mark J. Gasiorowski, *The United States Overthrew Iran's Last Democratic Leader*, FP (Oct. 30, 2019), available at <https://foreignpolicy.com/2019/10/30/the-united-states-overthrew-irans-last-democratic-leader/>.

of government, which faced increasing opposition from various groups, including religious figures, intellectuals, and students. The opposition culminated in the 1970s, which ultimately led to the Iranian Revolution in 1979. Several factors are thought to have led to the revolution, including dissatisfaction with the land reforms,<sup>18</sup> corruption, economic distress and inequalities, the repression of political dissent, the forced secularization and westernization of the society, which largely misaligned with the identity of the population in rural areas, and the Pahlavi dynasty's close ties with the West, in particular the United States.

### The 1979 Islamic Revolution

The 1979 revolution was initially led by a coalition of many opposition groups, including leftists, nationalists, students, and Islamists. Ayatollah Ruhollah Khomeini, who had long opposed the Shah's rule and had a large following among religious conservatives, and who had returned from his exile in France, emerged as a key figure of the opposition movement. After the fall of the monarchy, he established a provisional government to manage the transition, which eventually drafted a new Constitution for Iran that established the Islamic Republic of Iran.

The new government under Ayatollah Khomeini faced significant opposition from a wide range of groups following the revolution. The opposition included secularists, liberals, communists, ethnic minorities, and others who opposed the establishment of an Islamic theocracy. The government implemented a series of measures aimed at eliminating its opposition and consolidating its power, including the establishment of a Revolutionary Courts system that tried and executed opponents of the Islamic Republic or former members or supporters of the Pahlavi dynasty.<sup>19</sup> It has been largely criticized for violating due process and fair trial standards.<sup>20</sup> Due to the important role that the regime's systematized violent repression and its leadership structure played in consolidating and monopolizing power, these two key features will be discussed separately in detail.

### The Islamic Republic - Repression

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<sup>18</sup> William Branigin, *Farmers Dislike Shah's Land Reform*, WASH. POST (Dec. 29, 1978) available at <https://www.washingtonpost.com/archive/politics/1978/12/29/farmers-dislike-shahs-land-reform/23ae91f4-59fc-43aa-b118-e73b291c3273/>.

<sup>19</sup> Youssef M. Ibrahim, *Inside Iran's Cultural Revolution*, N.Y. TIMES (Oct. 14, 1979), available at <https://www.nytimes.com/1979/10/14/archives/inside-irans-cultural-revolution-iran.html>.

<sup>20</sup> Mahmood Amiry-Moghaddam, *Iran's Revolutionary Courts: 38 Years of Unfair Trials and Arbitrary Executions*, GLOBE POST (Feb. 23, 2018), available at <https://theglobepost.com/2018/02/22/iran-revolutionary-courts/>; U.S. Dep't State Responses to Information Requests, *Iran: The Revolutionary Court System, Including Procedures and Documents Issued by the Courts (2017-March 2020)* (Mar. 31, 2020), available at <https://www.justice.gov/eoir/page/file/1264421/download>.

The Islamic Republic also shut down dissenting radio stations and newspapers, and the Constitution provides that the appointment and dismissal of the state's head of radio and television is to be decided by the Supreme Leader. Moreover, the government banned all political parties except those that were approved by the government. After eliminating leftist and secular factions within the revolutionary movement, the government also worked to consolidate its power by eliminating rival factions within the Islamic movement.<sup>21</sup> Another measure taken in the transition was the nationalization of assets and properties held by the Pahlavi dynasty and its allies.<sup>22</sup>

The period following the 1979 revolution is often referred to as a cultural revolution with profound impacts on social and cultural life in Iran. With the rule of Islam at the center, many changes were rapidly implemented. For example, consumption of liquor and pork were forbidden, men and women were no longer allowed to swim on the same beaches, women were no longer allowed to sing publicly, and religious training became compulsory in schools.<sup>23</sup> A Cultural Revolution Headquarters, later the Supreme Cultural Revolution Council, was established to recommend policies and plans for the education and culture in Iran, in accordance with Islamic culture.

Crackdown on opponents and minorities have continued throughout the ruling of the Islamic Republic, including arrests and prosecutions of members of the Baha'i faith and other religious and ethnic minorities.<sup>24</sup> There are a few key facts that have made the history of the Islamic Republic's violent repression of civil and political opposition against its ruling.

- The 1988 Mass Executions

"The 1988 executions" were a series of mass executions of political prisoners, which have been widely denounced as a mass atrocity and a crime against humanity. Shortly after the Iran-Iraq War, Ayatollah Khomeini issued a fatwa ordering the execution of political prisoners, in particular those associated with the Mujahedin-e-Khalq opposition group. Although the exact number of executed prisoners is disputed, estimates range from 4,000 to 30,000. The executions were conducted secretly and without respect for due process or fair trial rights. Most of the prisoners were hanged, and their bodies were buried in individual and unmarked mass graves.

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<sup>21</sup> Youssef M. Ibrahim, *Inside Iran's Cultural Revolution*, N.Y. TIMES (Oct. 14, 1979), available at <https://www.nytimes.com/1979/10/14/archives/inside-irans-cultural-revolution-iran.html>.

<sup>22</sup> William Branigin, *Iran Announces Takeover of All Private Banks*, WASH. POST (Jun. 9, 1979), available at <https://www.washingtonpost.com/archive/politics/1979/06/09/iran-announces-takeover-of-all-private-banks/5d0c16a1-da45-43bf-bf8a-91a5562bf6bb/>.

<sup>23</sup> Youssef M. Ibrahim, *Inside Iran's Cultural Revolution*, N.Y. TIMES (Oct. 14, 1979), available at <https://www.nytimes.com/1979/10/14/archives/inside-irans-cultural-revolution-iran.html>.

<sup>24</sup> Amnesty Int'l, *Iran: Stop Ruthless Attacks on Persecuted Baha'I Religious Minority* (Aug. 24, 2022), available at <https://www.amnesty.org/en/latest/news/2022/08/iran-stop-ruthless-attacks-on-persecuted-bahai-religious-minority/>.

Human rights organizations have called for those responsible for the killings, including senior government officials and clerics who participated in ordering and executing the prisoners, to be held accountable. The Iranian government has denied the accusations and has never officially recognized or even investigated the events of 1988.<sup>25</sup>

- The 1999 Kuye Daneshagh Protest

One of the most widespread and violent public protests against the rule of the Islamic Republic is the “1999 Kuye Daneshagh protest.” The protest took place in July 1999 following the closure of the reformist newspaper, Salam, and the death of a student during a riot’s police raid of a student dormitory. The events initiated days of protests which were met with violent resistance leading to the death and disappearance of hundreds of people.<sup>26</sup>

- The 2009 Iranian Green Movement

Again in 2009, following the presidential election, protests erupted across Iran. Many Iranians believed that the election had been rigged in favor of the president Mahmoud Ahmadinejad and demanded a recount or new elections. The protests became known as the Iranian Green Movement as the color green became a symbol of the protest, or Persian Spring. The government responded with a massive crackdown, which included the use of violence, mass arrests, and censorship. Iranian security forces were deployed to quell the demonstrations, which continued for several weeks. During the crackdown, over 40 people were killed, and thousands were arrested, including opposition leaders, journalists, and human rights activists. Many of those arrested were subjected to torture and other forms of mistreatment while in detention. The government also imposed strict controls on the media, shutting down websites, and banning foreign journalists from covering the protests. The crackdown was widely condemned by the international community, including the UN, human rights organizations, and governments around the world.<sup>27</sup>

- The 2017, 2019, 2019 Protests

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<sup>25</sup> See Amnesty Int’l, *Blood-Soaked Secrets*, available at <https://www.amnesty.org/en/latest/campaigns/2018/10/blood-soaked-secrets/>; Human Rights Watch, *Iran’s 1988 Mass Executions: Evidence & Legal Analysis of ‘Crimes Against Humanity’* (Jun. 8, 2022), available at <https://www.hrw.org/news/2022/06/08/irans-1988-mass-executions>.

<sup>26</sup> Human Rights Watch, *New Arrests And “Disappearances” Of Iranian Students Seventy-seven Detainees or Missing Identified* (July 30, 1999), available at <https://www.hrw.org/legacy/press/1999/jul/iran730.htm>.

<sup>27</sup> Human Rights Watch, *The Islamic Republic at 31: Post-Election Abuses Show Serious Human Rights Crisis* (Feb. 10, 2010), available at <https://www.hrw.org/report/2010/02/11/islamic-republic-31/post-election-abuses-show-serious-human-rights-crisis>.

In 2017, 2018, and 2019, protests spread again across Iran over economic and political grievances. The government responded with a crackdown that included the use of force, mass arrests, and censorship. At least 30 people were killed, and hundreds were arrested.<sup>28</sup> In 2019, protests broke out in Iran over raised fuel prices.<sup>29</sup> The government again responded with a violent crackdown and a near-total internet shutdown, arresting hundreds of people and killing hundreds of people.<sup>30</sup> Amnesty International found that use of torture and sexual violence by the authorities against men, women, and children were widespread, including for purposes of eliciting confessions.<sup>31</sup>

- The 2020 Protests

In 2020, protests broke out over the shooting down of a Ukrainian passenger plane by the Iranian Revolutionary Guard Corps (IRGC), shortly after takeoff from Tehran.<sup>32</sup> According to Human Rights Watch, the authorities harassed and intimidated the victim's family members who had spoken publicly about and demanded accountability.<sup>33</sup>

- The Death Of Mahsa (Jina) Amini and the 2022 Protests

The most recent protests, sparked by the death of Mahsa (Jina) Amini on September 16, 2022, have similarly been met with severe violence, including the use of shotguns, assault rifles, and handguns against protesters, disruptions of internet access, extra-judicial killings, sexual violence, arrests, torture, and executions.<sup>34</sup>

Although initiated at different times, since 1979, there have been multiple protests against the ruling of the Islamic Republic which have been met with fierce violence causing overall

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<sup>28</sup> U.S. Dep't State, *Iran 2018 Human Rights Report*, 3 (2019), available at <https://www.state.gov/wp-content/uploads/2019/03/IRAN-2018.pdf>.

<sup>29</sup> Farnaz Fassihi & Rick Gladstone, *Iran Abruptly Raises Fuel Prices, and Protests Erupt*, N.Y. TIMES (Nov. 15, 2019), <https://www.nytimes.com/2019/11/15/world/middleeast/iran-gasoline-prices-rations.html>.

<sup>30</sup> Human Rights Watch, *Iran: No Justice for Bloody 2019 Crackdown* (Nov. 17, 2020), <https://www.hrw.org/news/2020/11/17/iran-no-justice-bloody-2019-crackdown>.

<sup>31</sup> Amnesty Int'l, *Iran: Detainees Flogged, Sexually Abused and Given Electric Shocks in Gruesome Post-Protest Crackdown – New Report* (Sep. 2, 2020), <https://www.amnesty.org/en/latest/press-release/2020/09/iran-detainees-flogged-sexually-abused-and-given-electric-shocks-in-gruesome-post-protest-crackdown-new-report/>.

<sup>32</sup> Michael Safi, *Iran: Protests and Teargas as Public Anger Grows Over Aircraft Downing*, THE GUARDIAN (Jan. 13, 2020), <https://www.theguardian.com/world/2020/jan/12/iran-riot-police-anti-government-backlash-ukraine>.

<sup>33</sup> Human Rights Watch, *Iran: Ukraine Airline Victims' Families Harassed, Abused* (May 27, 2021), <https://www.hrw.org/news/2021/05/27/iran-ukraine-airline-victims-families-harassed-abused>.

<sup>34</sup> Human Rights Watch, *Iran: Events of 2022*, World Report 2023, Country Chapters, <https://www.hrw.org/world-report/2023/country-chapters/iran>; Tamara Qiblawi, *How Iran's Security Forces Use Rape to Quell Protests*, CNN (Nov. 21, 2022), <https://www.cnn.com/interactive/2022/11/middleeast/iran-protests-sexual-assault/index.html>.

hundreds of thousands of deaths and enforced disappearances. Violent repression of opposition is systematic and institutionalized due to the leadership structure of the Islamic Republic.

### The Islamic Republic - Leadership Structure

The Islamic Republic has been described as a “very, very difficult [system of government] to understand,” even for “insiders to fully grasp all of its complexity, let alone to be able to predict what [it] is likely to do next.”<sup>35</sup> The reason is that the political landscape is defined by both formal institutions as well as informal networks and key personalities that interplay. Scholars have even held that the informal networks trump the formal ones in the Islamic Republic:

“Although the constitution of the Islamic Republic does set forth the roles and responsibilities of the various formal institutions of the government—and these bodies certainly have importance—the institutions serve primarily as a backdrop or playing field for informal give and take among the individuals, networks, and factions that the Supreme Leader oversees, brokers, and, at times, engages. Thus, the framework or lens through which outside analysts must view the Iranian system does not begin with the formal institutions but rather with the influence, experiences, and worldviews of and relationships among *khodi* individuals, their networks, and key power centers, such as the IRGC and the Haqqani clerical complex. These individuals and groups often use formal institutions to gain and maintain power, influence, and access to financial and other resources—all under the watchful eye of the Supreme Leader. This makes the examination of Iranian decision making exceedingly difficult because backchannel maneuvering and bargaining are by nature hidden from view.”<sup>36</sup>

At the center of the power structure is the current Supreme Leader Khamenei and his closest men, followed by other officials and key figures. There are however also broader circles of influence and power in the Islamic Republic, estimated to comprise around 15 percent of Iran’s population, referred to as *khodi* (meaning “one of us”). They gain their influence mainly from affiliations with key individuals and groups. Money, religious ties, and shared educational and professional backgrounds are often held as sources of influence in the informal Iranian

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<sup>35</sup> Kenneth Pollack, comments at “Iran on the Horizon, Panel II: Iran and the Gulf,” Middle East Institute Conference Series, Middle East Institute, Washington, D.C., February 1, 2008, as cited in David E. Thaler, et. al., *Mullahs, Guards, and Bonyads: An Exploration of Iranian Leadership Dynamics*, RAND CORP., 116 (2010), available at <https://www.rand.org/pubs/monographs/MG878.html>.

<sup>36</sup> David E. Thaler, et. al., *Mullahs, Guards, and Bonyads: An Exploration of Iranian Leadership Dynamics*, RAND CORP., 116 (2010), available at <https://www.rand.org/pubs/monographs/MG878.html>.



networks.<sup>37</sup> The most influential type of networks is further thought to be the clerics, *bonyads* (charitable trusts that control an estimated 20% of Iran's GDP), and the IRGC.<sup>38</sup>

Given the lack of transparency and complexity of the informal networks, the following is limited to a brief overview of the formal institutions and powers accorded by the Constitution.<sup>39</sup>

- The Supreme Leader, currently Ayatollah Ali Hosseini Khamenei, has the most central position in the Islamic Republic. His power derives from the political-theological doctrine of *velayate faqih*, or the Guardianship of the Islamic Jurist, as advanced by Ayatollah Ruhollah Khomeini, the founder of the Islamic Republic. The Supreme Leader is appointed for life by the Assembly of Experts and has many formal authorities. For example, he defines and supervises the execution of the general policies of the Islamic Republic, he ratifies the appointment of the president, and he appoints the commanders of the IRGC, the military, heads of judiciary, broadcasting, clerical jurists of the Guardian Council, as well as other representatives in the government and Friday-prayer leaders.
- The elected president, at the time of writing, Masoud Pezeshkian, is responsible for the administration of Iran, as well as signing international treaties and implementing laws, and he is the head of the Council of Ministers and the Supreme National Security Council. Any presidential candidate must be approved by the Guardian Council and the president is elected by popular vote every four years for up to two terms.
- The Islamic Consultative Assembly, or Majles, is the legislative body of the Islamic Republic. It has 290 members elected for four-year terms, and the authority to approve government budgets, propose bills, ratify international treaties, and review the performance of the president and the ministers. All members are vetted by the Guardian Council to ensure loyalty.
- The Assembly of Experts is a body with 86 senior clerics, vetted by the Guardian Council and elected by popular vote to eight-year terms. Its task is to appoint and supervise the Supreme Leader, and all its members must be experts in Islamic Jurisprudence. They do

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<sup>37</sup> Abbas William Samii, *The Iranian Nuclear Issue and Informal Networks*, 59 NAVAL WAR COLL. REV. 63, 64, 72 (2006), available at <http://www.jstor.org/stable/26396697>.

<sup>38</sup> David E. Thaler, et. al., *Mullahs, Guards, and Bonyads: An Exploration of Iranian Leadership Dynamics*, RAND CORP., 54 (2010), available at <https://www.rand.org/pubs/monographs/MG878.html>. In 1980, the Washington Post estimated that there were 180,000 mullahs and around 1,000 individuals who claimed to be ayatollahs, making up the "country's new ruling class" and economic elite. See William Branigin, *The New Iran: Mullahs Become an Economic Elite*, WASH. POST (Jun. 15, 1980), available at <https://www.washingtonpost.com/archive/politics/1980/06/15/the-new-iran-mullahs-become-an-economic-elite/9f4093dc-ef47-4549-a4da-b559477993b5/>.

<sup>39</sup> See IRAN CONST. (1979), available at <https://www.refworld.org/docid/3ae6b56710.html>.

not publish any reports and their deliberations are closed and secretive. The Constitution provides the body with the authority to ultimately dismiss the Supreme Leader.

- The Guardian Council has six clerical jurists in Islamic jurisprudence appointed by the Supreme Leader for six-year terms, and six non-clerical jurists appointed by Majles at the recommendation of the head of the judiciary, who is in turn appointed by the Supreme Leader. The Constitution grants the council broad authority to oversee all public referenda and the elections for the Majles, Assembly of Experts, and the presidency. In practice, the council chooses from a list the candidates who it believes are qualified to run for office, particularly on the basis of their loyalty.<sup>40</sup>
- The Expediency Council was created by Ayatollah Khomeini in 1988. It consists of around 35-40 members that represent different government factions, some of which are appointed by the Supreme Leader, including the heads of the three branches of government, and the clerical members of the Guardian Council. It has supervisory authority over the three branches of government.
- According to the Constitution, the judiciary is an independent institution that enforces Islamic law. The head of the judiciary, currently Gholam-Hossein Mohseni Ejei, is appointed by and reports directly to the Supreme Leader and is responsible for the relationship between the judiciary and the executive and legislative branches of government.
- The Special Clerical Court is independent from the judiciary and is accountable only to the Supreme Leader. Its verdicts may not be appealed. It deals with prosecuting crimes committed by Islamic clerics, and it particularly served to arrest and charge several clerics with ties to the former Pahlavi Dynasty in the immediate post-revolution period.
- The Islamic Revolutionary Courts is a special court system designed to deal with all offenses against internal and external security, blaspheming, smuggling, espionage, conspiracy against the Islamic Republic, and issues of expropriation. Most recently, their trials resulted in the execution of at least four individuals who had joined the protests in the fall of 2022. The trials are typically held without proper defense lawyers, no adequate evidence standards and, sometimes lasting “no more than a few minutes.”<sup>41</sup> In most cases confessions are obtained by means of torture or other inhumane and degrading treatment. Some of the common charges include waging war against God (Mohareb), corruption on Earth (Ifsad fel Arz), and armed rebellion (Baghi).

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<sup>40</sup> CFR.org Editors, *The Islamic Republic's Power Centers*, Council on Foreign Relations (Sep. 23, 2022), <https://www.cfr.org/article/islamic-republics-power-centers>.

<sup>41</sup> Jenny Norton, *Inside Iran's Revolutionary Courts*, BBC (Oct. 17, 2015), <https://www.bbc.com/news/magazine-34550377>.

- The Supreme National Security Council (SNSC) is the national defense and security body of the Islamic Republic. Its members include the president, ministers, the chiefs of IRGC and Artesh, the heads of judiciary and legislative branches, and two personal representatives of the Supreme Leader.
- Lastly, the IRGC and the Artesh are the Islamic Republic's two armed forces. Both have separate armies, navies, and air forces, but the IRGC is particularly also focusing on internal security matters and political survival. It is also in control of most of Iran's missile forces, is involved in the nuclear program, and is leading the Basij Resistance Force. The Basij is a paramilitary force, established by the order of Ayatollah Khomeini in 1979. It consists of civilian volunteers, often in exchange for official benefits, who are present in universities, local villages, factory workers and other parts of civil life, often acting as morality police. It is not clear how many members it has, but it is said to have around 1 million members of which around 100,000 are active.<sup>42</sup>

### Key Takeaways from the Iranian Context that May Inform A Future Transitional Justice Process in Iran

While the above does not provide a comprehensive understanding of the complex context that exists in Iran, it does provide some insights that can inform the analysis of what would go into a future transition to democracy.

*First*, Iran has a history of political activism and protests that pre-dates the Iranian Revolution, under different leaderships, despite severe and violent crackdowns.<sup>43</sup> Many of the protests have historically been in response to economic and political grievances, corruption, undue foreign influences in internal affairs and systematic repression.<sup>44</sup>

*Second*, it is evident that the aggressive westernization and secularization attempts of the Pahlavi dynasty severely backlashed. The complete disregard of tradition and of the indigenous and socio-cultural context seemed to have instead created larger gaps in Iranian society, which in part led to the massive support for the establishment of an Islamic Republic. Similarly, the

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<sup>42</sup> Hyder Abbasi, *A Feared Iranian Militia is Leading the Crackdown on Protestors. Who are the Basij?*, NBC NEWS (Oct. 22, 2022),

<https://www.nbcnews.com/news/world/iran-protests-mahsa-amini-death-basij-militia-schoolgirls-rcna53121>; Tara Kangarlou, *The Brutal Militia Trained to Kill for Iran's Islamic Regime*, TIME (Dec. 5, 2022), <https://time.com/6238623/iran-basij-militia-meaning-mahsa-amini/>.

<sup>43</sup> Armani Syed, *Iran Has a Long History of Political Activism and Protest. Here's What to Know*, TIME (Nov. 22, 2022), <https://time.com/6234429/iran-protests-revolution-history/>.

<sup>44</sup> For a detailed account of the history of protests and the role of various leaders, including clergies, see Stephanie Cronin, *SOLDIERS, SHAHS AND SUBALTERN IN IRAN: OPPOSITION, PROTEST AND REVOLT, 1921-1941* (Palgrave Macmillan London 2010).

ongoing protests today are in many ways a strong backlash against the cultural revolution of the Islamic Republic.<sup>45</sup>

*Third*, Islam and the clergy have been an important part of Iranian history. Already in the amendment to the first Constitution established by the Qajar dynasty in 1907, Twelver Shi'ism was declared as the state religion. A future transitional justice process in Iran should therefore also acknowledge the significant influence that religion has had on the cultural and civil life of the Iranian people by promoting religious freedom.

*Fourth*, the brief account above also shines light on the fact that there has been no real accountability for the past crimes of any of the ruling parties. There have been no investigations, no truth processes, no reconciliation efforts, no grievance mechanisms, and no trials. For a state that has experienced many mass atrocities and human rights abuses, any future transitional justice process should investigate crimes that go back to the pre-revolution era, to enable establishment of truth, recognition, and healing for the entire community.

*Lastly*, Iran's recent history has culminated in its current form of government, which has the makings of an autocracy ripe for a transition to a more democratic form of government. Power is consolidated among a select few leaders with limited checks on their authority. To the extent the Iranian Constitution provides for some *de jure* checks and balances, those procedures are opaque and cannot be effectively monitored by the public.

The recent history of Iran is thus a story of cultural war and division, and a story of authoritarian rule. This implies that any future transitional process that attempts to achieve modernization and secularization, should first and foremost focus on political development and economic growth, including strong participation of civil society, and implementation of anti-corruption measures and measures that address inequality. Iran's culture may then take shape in an organic way and not in a top-down shallow manner, accounting for the diversity of the Iranian people.

### *Transitional Justice Key Concepts and Success Factors*

As previously mentioned, the concept of transitional justice is often understood in light of the final goal of the transitional justice process which is generally that of transitioning a country from dictatorship and brutal repression to democracy. Transitional justice does not have a fixed structure but it varies depending on the particularity of the country and region at issue, including

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<sup>45</sup> Kian Tajbakhsh, *The Culture War Behind Iran's Protests*, WALL STREET J. (Nov. 11, 2022), <https://www.wsj.com/articles/the-culture-war-behind-irans-protests-11668179018>.

cultural, political, religious, and social considerations. In some countries, the transitional justice process is designed around the concept of restorative justice, according to which victims seek non-repetition and damages; in other countries the focus of transitional justice is on retribution. For this reason, it is important to design a transitional justice process that addresses the specific challenges and needs of the country where it takes place and of the people it intends to benefit. This section discusses key concepts and success factors of transitional justice.

### Key Concepts

The history of conflicts and atrocities demonstrates that in countries emerging from violent conflicts and authoritarian rule, designing an effective transitional justice process is a *conditio sine qua non* to reach peace, stability, security, and democratic governance. This is definitely the case in Iran where a theocratic state has been in power since the 1979 Islamic Revolution and has brutally repressed its population, recently leading to widespread protests across the country demanding the overthrow of the regime, justice for all the victims, and the establishment of democratic governance. Without a state-led fair and equitable accountability process, the country cannot move on as victims will not trust the government and its politics and will take their revenge for the harm endured causing more chaos, violence, and instability in the country. To this end, governments have increasingly made efforts to address the human suffering caused by atrocities, by holding perpetrators accountable and designing accompanying mechanisms to redress the harm endured by victims.<sup>46</sup>

The most important event in this regard has been the establishment of the first international criminal tribunals (Nuremberg and Tokyo trials), tasked with prosecuting perpetrators of atrocities committed during World War II. Initially, the focus of such efforts was on establishing judicial mechanisms, mainly judicial prosecutions, however, with time, as the concept of transitional justice was being shaped, governments and scholars have come to recognize the importance of combining judicial processes with other long-term state and institution-building activities (non-judicial processes), taking a more holistic approach to transition. Examples of non-judicial processes that are often resorted to in the process of transitional justice are truth commissions, reparations programs, institutional and legislative reforms, and national consultations. Taking a holistic approach is especially important when the society at issue is emerging from authoritarianism and conservative rule and aspires to transition to a more just and democratic society requiring a deeper transformation of its social, political, and economic structures.

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<sup>46</sup> Eric Wiebelhaus-Brahm, Early: Transitional Justice in the Arab World: Lessons Learned, 23, MIDDLE EAST POLICY 56, 56 (2016) available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/mepo.12217>.

Due to the various developments of the concept of transitional justice, the combination of judicial and non-judicial processes aimed at promoting institutional reforms alongside accountability with the aim of establishing new governance are now understood as the building blocks of transitional justice processes. Accordingly, transitional justice may be defined as: “the sum of activities through which states and citizens redress past political injustices - deeds that are no longer occurring but whose wounds may still be fresh as if they had happened yesterday - in order to restore political order in the present and in the future.”<sup>47</sup> Various actors may be involved in the transitional justice processes depending on the specific context and challenges. For example, often in countries where religious leaders play a key role in influencing the communities, faith-based actors play a prominent role in strengthening or undermining the transitional justice process.<sup>48</sup> Similarly the type of transitional justice processes initiated may vary depending on the priorities of the transitional justice plan developed. In most cases, states resort to hybridization of methods including truth-seeking, criminal prosecution, and reparations.

Iran is not the only country that has experienced or is experiencing the need to transition to a more just and equitable society. Previous instances of popular demonstrations and revolutionary movements, such as the Arab Spring which was ignited in Tunisia in 2011 and subsequently prompted widespread protests and uprisings throughout the Middle East and North Africa (MENA) region,<sup>49</sup> have underlined the importance of having a clearly articulated strategy for transitional justice that guides countries emerging from autocratic governments responsible for mass human rights violations, such as Iran, through their transition to a democratic government.

Additionally, state practice demonstrates the importance of developing a comprehensive and effective transitional justice strategy to ensure all the needs of the community emerging from conflict are addressed. The case of Iraq demonstrated how the lack of a comprehensive and well-developed transitional justice strategy may undermine a peaceful transition to democracy (see Annex 1: Iraq Case Study). In fact, in the case of Iraq, the US officials who established the transitional justice mechanism mainly focused on dismantling the Baath Party and removing its members from public employment but did not establish other transitional justice mechanisms such as truth commissions or mechanisms to provide victim reparations causing significant frustration across the community.

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<sup>47</sup> Daniel Philpott, *What Religion Brings to the Politics of Transitional Justice*, 61, JOURNAL OF INTERNATIONAL AFFAIRS 93, 94 (2007).

<sup>48</sup> Glob. Initiative for Just. Truth and Reconciliation, *Religious Leaders and Transitional Justice*, 2 (2021) available at <https://gijtr.org/wp-content/uploads/2021/12/Religion-and-TJ-final.pdf>.

<sup>49</sup> Elie Abouaoun, *Tunisia Timeline: Since the Jasmine Revolution*, United States Institute of Peace, (July 12, 2019), available at <https://www.usip.org/tunisia-timeline-jasmine-revolution>.

Overall, previous experiences and the Iranian context show that without a clear and widely endorsed plan, the risk is that Iran will remain imprisoned in a cycle of violence leading to chaos, instability, and armed conflict.

### Key Success Factors: Credibility and Legitimacy

Comparative state practice highlights key success factors of transitional justice that shall be taken into account in designing a transitional justice process and that, specifically for the Iranian context, may be crucial to the success of transitional justice.

Credibility and legitimacy are key success factors of transitional justice. Transitional justice processes typically come during or at the end of conflict which has significantly destabilized a country. Often local communities are deeply affected by the suffering caused by the conflict and, especially where the suffering was largely caused by the state authorities, they have deep distrust of the government and state institutions. In the challenging context of Iran, it is expected that the community will be skeptical about the transitional justice government and its agenda. Thus, it is important that the transitional justice government actively builds support and credibility across the country, as the success of a transitional justice process largely depends on its perceived legitimacy and credibility among the community. To be credible, such a process must be gradual and must convince different ethnic, religious, and political groups that the proposed transitional justice framework is the best option to achieve long-term peace and stability.

This section discusses a number of considerations in relation to the challenge of devising a strategy that aims to increase the credibility of the transitional justice process even among the more skeptical groups, while promoting an innovative and human rights agenda that demonstrates a clear break with the past and meets the expectations of the younger and more vulnerable generations. The section analyzes three key issues, which, depending on how they are tackled, may undermine or strengthen the credibility of the transitional justice process: (i) the inclusion of civil society in transitional justice, (ii) the role of faith-based actors in transitional justice, and (iii) balancing progressive and conservative views.

### The Inclusion of Civil Society in Transitional Justice

In nations grappling with legacies of conflict, repression, or authoritarianism, the journey towards justice and reconciliation is often filled with complexities. During transitional justice phases, state-led mechanisms, while essential, can be hampered by political constraints, lack of resources, or even complicity in past wrongs. This is where civil society organizations (“CSOs”)

emerge as a formidable force, wielding unique tools and perspectives to navigate the path to a more just society. From grassroots movements to international non-governmental organizations (“NGOs”), these diverse actors leverage local knowledge, trust among victims, and cross-border networks to champion transitional justice.

- Civil Society in Iran

After the Islamic Revolution in 1979, the Islamic Republic government dissolved all CSOs that had emerged before the revolution and had played a significant role in coordinating nationwide strikes and street protests. The regime banned all their activities too. Additionally, the regime tried to suppress any protest or dissent at its inception by arresting thousands of political opponents and executing many during the 1980s. Nevertheless, many activists from former organizations tried to revive these entities and continue their trade and civil activities.

In the past two decades, any attempt to resume activities or establish syndicates and organizations that were independent of the mechanisms defined by the regime faced numerous difficulties, including the arrest of trade activists, their long-term imprisonment, dismissal from their jobs, prevention of legal registration or cancellation of licenses, confiscation of properties, and prevention of general assembly meetings, thus limiting these organizations. However, some of these groups have in recent years used the capacity of media and social networks to announce their presence in the virtual space and have played a significant role in organizing labor protests and nationwide strikes.

Widespread repression on trade and civil activists, as well as marginalizing and ignoring these organizations and civil institutions, remains the Islamic Republic’s main strategy towards civil society to limit its impact on the country’s life. Yet, these forces are the only ones who, if supported, can achieve victory through extensive organization and leading protests and can also play a significant role in governing the country, legislating, establishing justice, and democracy in the future.

Today, despite the continuous repression, there are several examples of civil society organizations that continue their peaceful struggles covertly and play a very important role in raising awareness and mobilizing activists for a more democratic Iran.

- Examples of Active Civil Society Organizations

*The Independent Iranian Workers Union (IIWU), Website: [www.etehad-e.com](http://www.etehad-e.com)*



The Independent Iranian Workers Union is a labor organization composed of both temporary and permanent workers from all sectors of production, services, industry, as well as dismissed and unemployed workers.

This union was officially declared in November 2006 in Sanandaj, Iran. Initially named the Nationwide Union of Dismissed and Unemployed Workers, it was renamed in 2008 to the Independent Iranian Workers Union.

The founders of this union have been arrested and imprisoned several times.

This labor organization sees itself as a vessel for all Iranian workers to achieve their demands and aims for a humane life in accordance with modern human standards and advancements. Its charter states that the union strives to organize workers from various production sectors within itself, to unite and integrate their ongoing struggles for their demands on a national scale.

One of its most significant achievements was a petition in 2012 signed by 20,000 workers from factories across Iran addressed to the then Minister of Labor regarding wage and rights increases.

They are also responsible for organizing workers in various cities who have played a significant role in trade and labor strikes.

On February 10, 2010, alongside four other labor organizations (the Haft Tappeh Sugarcane Workers Syndicate, the Retirees Alliance, the Coordination Committee to Help Form Workers' Organizations, and the Khuzestan Retired Workers), the Independent Iranian Workers Union issued a statement known as the Charter of Iranian Workers' Minimum Demands.

*Coordination Council of Iranian Teacher's Trade Associations, Website: [hamahangi.org](http://hamahangi.org)*

In Iran, there are 45 teacher trade organizations, of which 20 are currently active. The Tehran Teachers' Trade Association, a non-governmental and non-profit independent organization, was established in 2000 with the license from the Ministry of Interior in Tehran and was also permitted to establish branches throughout Iran.

After the establishment of the Tehran Teachers' Trade Association, other organizations were also established in other cities of Iran. In 2001, five organizations from Tehran, Isfahan, Khorasan, Fars, and Hamedan held a general assembly, drafted a charter and executive regulations, and established the Coordination Council of Iranian Teacher's Trade Associations, which includes all teacher's trade organizations in Iran. According to the charter of the Coordination Council of Iranian Teacher's Trade Associations, a general assembly should be held annually to review performance, make new decisions, and elect the presidency of the council (secretariat).

All trade and field actions of educators are carried out by the call of the Coordination Council of Iranian Teacher's Trade Associations, including dozens of trade gatherings involving thousands of people in front of institutions such as the Parliament and the Presidency. These protests led to the government not renewing the activity license of the trade associations for the second time in 2003. In the winter of 2007, teachers protested against the government by gathering five to six thousand people in front of the Parliament. Due to government and parliamentary neglect of their demands, they issued a statement signed by representatives of 30 organizations, protesting against the current process, which led to arrest warrants, convictions, and judicial cases being issued for nearly 500 teachers, and many trade organizations were not allowed to hold general assemblies until 2016.

Recently, on March 28, 2024, Ms. Shiva Amelirad from the Teacher's Trade Association in Marivan was elected as a representative of the Coordination Council in the International Education Union. The establishment of specialized working groups to pursue trade rights, efforts to communicate with policymakers to reform or change laws, issuing statements and organizing petitions, and calling for nationwide trade gatherings are among the activities of the Coordination Council in recent years.

In addition to trade positions, the Coordination Council has also taken positions on crises and some social issues. Protests against the increase in gasoline prices and the suppression of public protests in November 2019, support for the right to education of Afghan girls, condemnation of attacks on girls and women in Mashhad, and support for the demands of workers and students are among the non-trade positions of the Council in recent years.

Most members of this organization have been arrested several times over the years and have spent many years in prison, and hundreds of active teachers in the Teacher's Trade Association and the Coordination Council have been dismissed and fined.

*The Voice of Iranian Women, Instagram: nedayezananeiran, Telegram: nedaeziran*

The Voice of Iranian Women is an organization that supports women's rights in Iran, established in 2010 by a group of former political prisoners and women's rights activists. However, it was unable to obtain an official license from the Ministry of Interior of the Islamic Republic and in 2013, the founders were only able to register it as a non-profit organization in the corporate registration system and received a tracking number.

The Voice of Iranian Women began its activities by organizing women's group sports in parks and public places, and then offered literacy classes to Iranian and Afghan women. They also conduct some educational sessions and engage in online activities to raise awareness and educate about women's rights. Members of The Voice of Iranian Women publicly celebrate March 8, International Women's Day, and November 25, the International Day for the Elimination of Violence Against Women, annually. In 2013, they started a petition campaign for women's divorce rights and unemployment insurance, which, after collecting over 1,000 signatures, was submitted to the Islamic Consultative Assembly. They focus particularly on the rights of working women and closely collaborate with other labor organizations. The Voice of

Iranian Women has initiated campaigns against female genital mutilation (FGM), acid attacks, retaliation, execution, stoning of women, and also compulsory hijab.

In recent years, security pressures on the organization have increased, and four of its founders were arrested and each sentenced to four years in prison, ultimately released after one year through a general amnesty.

*The Syndicate of Workers of Haft Tappeh Sugarcane Agro-Industry, Telegram Address: tape7\_syndica*

The "Syndicate of Haft Tappeh Sugarcane Workers" channel on Telegram has nearly 2700 members and is the only source for publishing news and positions in the name of the Haft Tappeh Sugarcane Syndicate in cyberspace.

The Syndicate of Haft Tappeh Sugarcane Workers is an Iranian labor organization established in 1974 but was shut down following the rise of the Islamic Republic. In 2007, about 2500 workers from Haft Tappeh Sugarcane in a letter to the Director General of Labor in Khuzestan Province requested the reopening of their syndicate. This request was treated as a security issue, and those who signed it were arrested. Despite all opposition and restrictions, the syndicate declared its existence in 2008, and in the fall of that year, the Haft Tappeh Sugarcane company, following privatization and facing significant problems regarding the payment of wages and salaries, saw intensified labor protests; the general assembly elections of the Haft Tappeh Sugarcane Workers Syndicate were held.

This action by the workers of Haft Tappeh Sugarcane was supported by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). According to reports, this international body, representing 373 trade unions and syndicates in 121 countries, declared its full support for the workers' struggle for wages, values, and civil rights.

In June 2013, during the 102nd session of the International Labour Organization in Geneva, Switzerland, representatives from official labor organizations in Iran were present. The Haft Tappeh Sugarcane Workers Syndicate, along with several other organizations including the Syndicate of Mechanical Metal Workers and the Re-establishment Committee of the Painters' Syndicate, was one of the organizations that in a joint letter to the ILO presidency reported violations of fundamental labor rights and principles in Iran due to the absence of their representatives because of governmental restrictions.

The Syndicate of Haft Tappeh Sugarcane Workers was one of the four organizations that in February 2010 issued a statement known as the Charter of Minimum Demands of Iranian Workers.

Following the privatization of the Haft Tappeh Agro-Industry complex and managerial changes in 2015, the conditions for the workers worsened significantly. Since then, the syndicate has organized numerous strikes to improve working conditions for its members, claim overdue

wages, and demand retirement and other social security benefits. In 2017-2018, the syndicate organized a series of extensive strikes in protest against unfulfilled promises by officials.

*Center for the Defense of Workers' Rights, Website: [kanoonm.org](http://kanoonm.org)*

The Center for the Defense of Workers' Rights is an independent and non-governmental organization formed by workers in 2008 in Tehran. Its mission is to achieve justice, social management of the people's economy, as well as equality and the defense of workers' rights through coordination and collaboration aimed at organizing society based on the liberation of labor.

The charter of the Center emphasizes that having all rights and benefits stipulated in the Universal Declaration of Human Rights, international labor rights conventions, and social rights of the constitution and national laws is the most natural right of workers. The relatively good relations of the Center with institutions like the International Trade Union Confederation (ITUC) indicate that its leaders have taken effective steps in international interactions. Accordingly, in 2012, through ITUC, the Center sent a letter to the representatives of workers' delegations from various countries participating in an ILO session, providing a report on the work and life conditions of Iranian workers. The letter highlighted the restrictions imposed by the government on independent labor organizations and mentioned the suppression and arrest of labor activists in Iran.

Also, during the global labor session in 2014, many representatives from independent labor organizations were invited by ITUC to this meeting. The Center for the Defense of Workers' Rights also sent a letter highlighting governmental restrictions that prevented these activists from attending, requesting the International Labour Organization to take a stance against the violation of workers' rights in Iran and to question the representatives of government-made labor organizations present at the session. The letter pointed out the widespread arrest of labor activists during the Labor Day gathering that year and the issuance of long-term sentences for them, as well as the dire state of wages and salaries of Iranian workers.

The members of the Center are primarily labor activists from other independent organizations, ranging from the Syndicate of the United Company to the Independent Workers' Union and even individuals from the Iranian Writers' Association.

*The Syndicate of Tehran and Suburbs Bus Company Workers, Instagram: [vahedsyndica](https://www.instagram.com/vahedsyndica), Telegram: [vahedsyndica](https://www.telegram.me/vahedsyndica)*

The Syndicate of Tehran and Suburbs Bus Company Workers was established in 1957. However, following the 1979 Revolution, the syndicate faced numerous challenges, and Islamic Labor Councils and Islamic Associations replaced traditional syndicates. In late 2005, some of the drivers, citing ILO Conventions 87 and 98 which mandate the freedom of association and the right to collective bargaining for member countries, took steps to reopen the syndicate. They designated a husseiniya located at the Bakers' Trade Association in Hassanabad Square, Tehran,

as their base of operations and began holding educational classes on human rights, sections of the Constitution, labor relations, labor law, trade union knowledge, globalization policies, etc.

Despite the discreet presence of security forces at all weekly meetings, these activities continued. In 2006, agents from the House of Workers attacked the syndicate's meeting place, assaulting the workers. In June 2006, a general assembly and elections were held under full security conditions, and some trade union activists were detained by police during the elections. Despite this, the syndicate was reopened by a group of employees from the Tehran and Suburbs Bus Company. As a result of these elections, 19 people were elected to the board of directors, and 2 as auditors.

On October 8, 2005, several board members met with the president to discuss the drivers' issues, leading to the arrest of some board members. This led to a strike declaration by the drivers on December 25, 2005, which resulted in further arrests of board members and syndicate members. This strike was centered around several demands, including the release of detained board members such as Mansour Osanloo, wage increases, the implementation of a job classification scheme, receipt of workers' coupons, and the establishment of health, welfare, and sports facilities.

During two strikes in the winter of 2005, over 300 drivers and workers from the company were arrested. Those arrested were fired from their jobs, although all but 49 of the active syndicate members who had been long dismissed were reinstated. Despite all pressures and threats, syndicate members continued to advocate for their colleagues and remained under pressure from management and security agents throughout this period.

Notable labor activists from the Syndicate include Reza Shahabi and Hassan Saeedi, members of the board of directors, who have been arrested several times since 2009 and faced long-term convictions. No general assembly has been held in the Syndicate since 2005 due to interference by security and management authorities. The last attempt to hold a general assembly was in 2018, but the Ministry of Labor continually referred syndicate members to Chapter 6 of the Labor Law, which only allows workers to form one of three organizations: an Islamic Labor Council, a Workers' Trade Association, or elect a worker representative, hence no other labor organization under the title of a syndicate is allowed to operate under the Labor Law.

The Syndicate is an official member of the International Transport Workers' Federation and an honorary member of the French National Trade Union Confederation (CGT).

In the past decade, some representatives of this syndicate have managed to participate in sessions of the International Labour Organization and meetings with French labor unions. During a spring 2017 ILO session, they met with ILO officials and discussed the government's prevention of the syndicate's general assembly, the harassment and jailing of union workers, and the dismissal of syndicate members, among other topics. They also advocated for the freedom to form independent labor organizations without government or employer interference. Official membership in the International Transport Workers' Federation was one of the achievements of these meetings.

The Syndicate of Tehran and Suburbs Bus Company Workers was one of the four labor organizations that signed the Charter of Minimum Demands of Iranian Workers in February 2010.

From spring 2014 to winter 2017, the syndicate published a newsletter called "Peyke Syndica" which covered news, reports, and raised awareness about domestic and international labor relations laws and provided information about the actions of this syndicate.

*Iranian Writers' Association, Instagram: kanoone.nevisandegane.iran, Telegram: kanoon\_nevisandegane\_iran*

*The Iranian Writers' Association was established in 1968 by a group of intellectual writers with the primary goal of promoting freedom of expression and combating censorship in Iran. Although the activities of this association were declared illegal in 1981, a group of writers formed an "Advisory Assembly" in 1994 to revive this body.*

The third phase of the association's activities began in 1988. From 1981 to 1987, some members went into exile, and others turned to more private activities. In late 1989, a draft called "Draft Charter of the Iranian Writers' Association" was developed in an informal meeting with the presence of poets, writers, translators, and researchers. This draft remained unaddressed due to some disagreements and pressures until 1994 when the letter "We are writers" was published.

Despite the incidents that occurred after the publication of this letter, the Iranian Writers' Association held its first general assembly of the third phase on December 4, 1999, with the participation of 120 poets, writers, translators, and researchers and messages from Ahmad Shamlou and Simin Daneshvar.

On September 8, 1996, 12 writers who had gathered to draft the association's charter were arrested and threatened with prosecution if they continued their meetings. Since then, members and the board of the Iranian Writers' Association have faced systematic harassment, long-term sentences, and even during the chain murders of 1998-1999, some were killed.

The last general assembly of the Iranian Writers' Association was held on January 2, 2018; since then, monthly meetings of the association, referred to as the "Consultative Assembly," have been held at members' homes.

In a statement issued on the occasion of its 50th anniversary, the Iranian Writers' Association emphasized its ongoing struggle against censorship. Despite all these harassments, members continue to pursue their goal of promoting freedom of expression and fighting censorship in Iran.

*Bidarzani, Website: bidarzani.com*

Bidarzani is an independent group of feminist activists who work to raise societal awareness about gender equality, the women's movement, and other social movements. This organization was initially launched in the winter of 2009 under the name "Until Equal Family Law" by a group of feminist activists. In the spring of 2014, they decided to change the name from "Until Equal Family Law" to "Bidarzani."

This group's goals include raising societal awareness about gender discrimination, advocating for women's rights, promoting gender equality and justice, raising awareness about discriminatory laws and the need for change, enhancing understanding of violence against women and promoting solutions, and increasing awareness about health, sexual, and reproductive rights. They also focus on raising awareness of the struggles of the women's movement and other social movements against poverty, inequality, and structural violence.

Despite not being able to obtain an official activity license from the Ministry of the Interior, which has forced them to operate clandestinely for the safety of its members, Bidarzani has collaborated with Iranian and Afghan feminist activists to organize several meetings and gatherings on occasions like March 8th or the International Day for the Elimination of Violence against Women in various cities.

Over the years, this group of women has had a significant presence in the digital space, educating on various issues related to women's topics.

Due to security concerns, the identities of those running this organization are not disclosed.

*The Center for Human Rights Defenders, Website: [www.humanrights-ir.org](http://www.humanrights-ir.org)*

The Center for Human Rights Defenders in Iran was established in 2002 by several lawyers including Shirin Ebadi, Abdolfattah Soltani, Mohammad Seifzadeh, and Mohammad Ali Dadkhah in Tehran. The organization is focused on defending political and ideological prisoners, making public statements on significant human rights violations, preparing and publishing quarterly and annual reports on the human rights situation in Iran, supporting the families of imprisoned political activists, establishing civil human rights institutions, and facilitating discussions and exchanges among thinkers and activists in the field of human rights education.

Before being legally registered in Iran, this organization joined the International Federation of Human Rights Societies and obtained international registration. In 2004, efforts by the Center for Human Rights Defenders to register and obtain a license for operation were unsuccessful, and its office was seized by security institutions, and its activities were declared illegal.

In 2003, the Center for Human Rights Defenders won a human rights award from the French National Human Rights Institution. Abdolfattah Soltani represented the center in Paris, where the Prime Minister of France presented the award.

Shirin Ebadi serves as the president, and Narges Mohammadi as the vice-president of the organization.

*The Association for the Defense of Working and Street Children, Website: [jamiatdefaa.org](http://jamiatdefaa.org), Instagram: [jamiatdefaaa](https://www.instagram.com/jamiatdefaaa)*

The Association for the Defense of Working and Street Children is a non-governmental organization that started its operations in 2000 and successfully obtained an operating license from the Ministry of Interior in 2001.

The organization's founding goal is to completely eradicate child labor, exploitation, and any form of abuse against children and to ensure the rights and conditions for a humane and equal life for all children worldwide. It also aims to secure fundamental rights and needs for children, protect children against exploitation, arbitrary detention, and more, and prevent harm to children as a societal duty. It promotes the participation of children in their own affairs and their right to express their opinions.

This organization collaborates closely with other labor unions and its members have often been harassed and persecuted by security agencies.

The organization is actively involved in providing literacy classes for children and raising public awareness about children and the damages caused by labor and exploitation.

*Organizational Council for Protests of Contract Oil Workers, Telegram Address: [shoranaft](https://www.telegram.me/shoranaft)*

This council, consisting of several labor activists, initiated its virtual presence in July 2021 on Telegram, announcing a nationwide strike by contract oil workers in refineries, petrochemicals, and power plants. During these strikes, hundreds of project workers protested against the lack of wage increases, absence of a 10-day leave for every 20 days of work, temporary contracts, and exploitative activities by contracting companies. The council made its virtual existence known at that time. However, it is still unclear who the primary members and operators of this virtual channel are, and there are only unofficial reports suggesting that members of the Organizational Council are comprised of active or retired labor activists from these centers.

The Organizational Council of Contract Oil Workers, which now has 2,400 members on its Telegram channel, describes itself as "a symbol and representative of the unity and solidarity of all sectors of workers in the oil industry."

The council has extensively covered protests and strikes, issued 12 statements in support of the workers' strikes and protests in these areas, conducted interviews, and produced reports on the conditions of workers employed there, as well as news and reports on the number of contracting centers participating in strikes and their achievements. The council also issued a statement regarding the minimum wage for 2022. Additionally, the Organizational Council was



one of ten organizations that issued a joint resolution of labor organizations on the eve of International Workers' Day in 2022. This council supports the formation of general labor assemblies and independent organizations and has criticized efforts to establish Islamic labor councils and also the formation of a labor association for third-party oil workers in the South Pars region.

The organization held two campaigns in 2020 and 2021, titled "10-20," demanding wage increases and the removal of contractors from ongoing construction and development projects; these were part of the workers' recent actions protesting the continuation of poor employment conditions, which led to widespread strikes in those years.

*Iran Retirees Council and United Retirees Group, Telegram Address for Iran Retirees Council: Shbazneshasteganir, Telegram Address for United Retirees Group: Getehadbazneshastegan*

These two organizations related to retirees in Iran have played a significant role in recent years in organizing and participating in protests and rallies across the country. However, due to security reasons, detailed and reliable information about the members and leaders of these groups, or their founding year, constitution, etc., is not available. They operate informally and clandestinely. Nevertheless, these organizations actively distribute news about retirees' issues online and publish their positions and opinions through statements. They also collaborate with other organizations.

#### *United Retirees Group*

This group was formed in response to the growing protests of retirees in recent years and resumed its activities in the spring of 2019 after a period of inactivity. There is no official information about its members, main organizers, or organizational structure, but it is said that some retired labor activists, who have been active in retirees' gatherings, are among its leaders. The group's activities include disseminating news, raising awareness about legal issues, issuing statements, supporting resolutions and declarations published by other independent labor organizations, and supporting retirees' field protests. The founding statement of this virtual group states that "United Retirees Group" operates on a council-based and democratic structure, advancing its objectives by defining the roles of each member.

#### *United Islamic Student Associations, Telegram: anjmotahed*

Founded in 2013, this group focuses on organizing students and establishing a national student union. Despite facing pressure from security agencies both inside and outside universities, they have continued to hold student gatherings. They applied for official union status in December 2019, but have yet to receive a response. However, the United Student Association still maintains its form as a union and strives to facilitate cooperation among all Islamic student associations across Iran. Due to the lack of an official permit, the group operates clandestinely and primarily online, making specific member information unavailable.

Activists from Isfahan University, facing existing obstacles, decided to create a media platform for students at Isfahan University. This media platform was established covertly on May 17, 2019. About three months after launching the "Progressive Students' Telegram Channel" on August 27, 2019, they announced their intention to form a student organization. During the "Women, Life, Freedom" protests, student activists from universities like Jundishapur, Tehran North, Shahid Beheshti, Azad University of Esfahan (Khorasgan), Isfahan University of Art, Isfahan University of Technology, and Alzahra University Tehran, as well as the National Committee of Kurdish Students, joined this association. The Progressive Students Association has established committees such as the Gender Equality Committee, Street Committee, Justice Seeking Committee, and Wage Earners Committee in collaboration with anti-government student bodies across different regions of Iran. The group claims 37 active student members but, for security reasons, identities remain undisclosed.

This association has a strong connection with other labor and professional organizations and often issues joint statements and publishes them online. They were also signatories to the "Charter of Minimum Demands of Independent Professional and Civil Organizations of Iran," issued by 20 organizations during the "Women, Life, Freedom" protests. They have played a significant role in organizing student protests at universities across Iran during the 2021 protests and in disseminating news about imprisoned or educationally disenfranchised students.

### Comparative State Practice

To understand the multifaceted role of civil society in transitional justice, this section examines two case studies: Iraq and Syria. Each nation presents a distinct set of challenges and opportunities, illustrating how CSOs have adapted strategies to fill critical gaps left by the state, advocate for comprehensive policy reforms, and safeguard the historical record of human rights abuses. By drawing lessons from these global experiences, this section will then outline recommendations for Iranian civil society. The following three cases highlight the role played by civil society in contexts marked by different types of political regression, including unconstitutional power grabs, ongoing conflicts, and government reluctance or inability to implement transitional justice mechanisms. Through these case studies, the aim is to understand how the involvement of civil society can influence the trajectory of transitional justice, either by compensating for state failures, advocating for comprehensive policy implementations, or preserving the historical record of human rights abuses under dire circumstances.

- Iraq

The earliest manifestations of civil society in Iraq were mostly intellectual gatherings, such as coffeehouses, salons, and social clubs for intellectuals, students and clerics.<sup>50</sup> Under the monarchy (1921-1958), cultural and social organizations were very active, especially as Iraq developed economically. Examples of civil society organizations that were very active are the Iraqi Writers Association and Society for Modern Art, the Women's Renaissance Society, the Baghdad Chamber of Commerce, the Iraqi Bar Association, and labor unions and syndicates.<sup>51</sup> The impressive engagement of civil society continued with the Iraqi Republic that was established through a coup in 1958. In 1959, the number of labor unions registered was 200.<sup>52</sup>

The extent and form of civil society engagement in Iraq changed completely with the establishment of the Baath Party through a coup in 1968, which led Saddam Hussein to power in 1979. The Baathist party eradicated civil society and, being a totalitarian regime, forced all civil society organizations into state-led, controlled and sponsored groups, leaving no independent or private organizations. Under Saddam's regime, all civil society organizations were scrutinized and the violent repression of independent movements was very common.

Iraqi civil society underwent another important transformation with the 2003 invasion. Following the 2003 invasion, civil society experienced rapid growth but was different from the past as it mostly engaged in responding to war-related needs, such as providing humanitarian aid, and was less active in the political and intellectual sphere, although some steps were taken in that direction and some syndicates were reestablished. According to the Coalition Provisional Authority (CPA), there were nearly 400 Iraqi CSOs as of 2004.<sup>53</sup> Additionally, more international civil society organizations established in Iraq to work independently or in collaboration with local civil society.

Overall, since the removal of Saddam Hussein, civil society in Iraq has achieved many accomplishments. Civil society has played a key role in human rights documentation, a task of immense importance given Iraq's complex conflict history and ongoing security issues. Through their efforts, civil society groups have collected evidence and testimonies that have been used or will be used in judicial and non-judicial processes, thus advancing justice and preserving a

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<sup>50</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) 5 *available at* [https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

<sup>51</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) 5 *available at* [https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

<sup>52</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) 5 *available at* [https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

<sup>53</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) 6 *available at* [https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

record of atrocities that might otherwise be ignored or denied. Additionally, Iraqi civil society has been instrumental in supporting victims of the conflict. This support includes legal assistance, psychological counseling, and helping victims navigate the complexities of national and international justice systems to seek redress. Civil society in Iraq has also assumed a significant educational function, promoting human rights awareness among the Iraqi populace. Through workshops, seminars, and media campaigns, these groups work to instill a culture of rights and justice that contrasts sharply with the previous regime's legacy of oppression.

Importantly, in 2010, Iraqi civil society obtained an important victory: the Law on Non-Governmental Organizations (Law No.12 of 2010) was ratified. Overall, this law simplified the process of registration and removed requirements and limitations that affected the independence of civil society organizations. While civil society has criticized the law for maintaining a tiringly bureaucratic process, it was widely welcomed.<sup>54</sup>

Despite all these efforts and achievements, the transition from authoritarian rule to a more democratic system has been fraught with obstacles, including significant governmental failures to implement effective transitional justice mechanisms and to create adequate conditions for civil society's deep engagement in transitional justice across the country.<sup>55</sup> Instead of strengthening and complementing state-led transitional justice efforts, civil society in Iraq has often been called to step in, and fill roles that are typically the domain of the state.<sup>56</sup> Due to these challenges, the growth of civil society has been non-organic and characterized by a strong sectarian divide.<sup>57</sup> Additionally, the engagement of civil society has been dependent on the availability of foreign funds creating a relationship of dependence with foreign donors which affects the long-term sustainability of their work.<sup>58</sup>

- Syria

Civil society has witnessed many transformations since the late nineteenth century when the first civic associations were established, until civil society-led movements initiated a peaceful

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<sup>54</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) 6 available at

[https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

<sup>55</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) available at

[https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

<sup>56</sup> National Democratic Institute, *The Voice of Civil Society in Iraq* (2011) 5 available at [https://www.ndi.org/sites/default/files/Civil\\_Society\\_Assessment\\_Iraq.pdf](https://www.ndi.org/sites/default/files/Civil_Society_Assessment_Iraq.pdf).

<sup>57</sup> National Democratic Institute, *The Voice of Civil Society in Iraq* (2011) 5 available at [https://www.ndi.org/sites/default/files/Civil\\_Society\\_Assessment\\_Iraq.pdf](https://www.ndi.org/sites/default/files/Civil_Society_Assessment_Iraq.pdf).

<sup>58</sup> Marsin AlShamary, POSTWAR DEVELOPMENT OF CIVIL SOCIETY IN IRAQ'S MID-EUPHRATES REGION (2022) available at

[https://www.brookings.edu/wp-content/uploads/2022/01/FP\\_20220103\\_iraq\\_civil\\_society\\_alshamary.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/FP_20220103_iraq_civil_society_alshamary.pdf).

revolution in 2011 that sadly escalated into a long-lasting civil war. The first civil society organization established in Syria dates back to 1874.<sup>59</sup> Throughout the twentieth century, the number of associations grew due to the promulgation of laws that allowed the formation of political parties and associations such as the Associations Law No. 47 that was promulgated in 1935 and the economic development which led to the establishment of trade unions.<sup>60</sup>

As the Assad regime took power in 1971, the civic sector was monopolized. The regime authorities controlled the work of the organizations and limited their engagement. Violent repression was widespread. For a few years, restrictions on civil society were eased in 2000, when Bashar al-Assad came to power pledging to undertake reforms that would benefit civil society engagement, also known as the “Damascus Spring.” New civil society organizations spread, including women’s rights associations, human rights advocacy groups, and anti-corruption movements.<sup>61</sup> However, this did not last long. Between 2005 and 2010, the regime increasingly controlled, monopolized and suppressed the work of civil society organizations, especially as criticism and opposition towards the regime could not be silenced anymore.

Syrian civil society has played a predominant role before, during and after the ongoing conflict. Civil society initiated and led the protests against the kleptocratic and autocratic Assad regime in 2011 which, met with violent repression, led to the ongoing civil war.<sup>62</sup> Even throughout the war, civil society has remained active, not only in the development and humanitarian aid sector but also in continuing organizing protests and gatherings across the country and in keeping the attention of the international community alive. For its active opposition to the regime, civil society representatives have paid a heavy price. The regime has detained, tortured and killed hundreds of people since 2011 in an attempt to suppress the opposition. The widespread repression and the violent war have pushed many civil society organizations abroad. Most of the transitional justice-related activities are therefore conducted by Syrians in exile or through international NGOs that partner with local activists discreetly. These external actors focus predominantly on documentation and advocacy, collecting evidence

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<sup>59</sup> Rama Najmeh, *#Breaking\_The\_Mold Arab Civil Society Actors and their Quest to Influence Policy-Making*, Issam Fares Institute for Public Policy and International Affairs 2 available at <https://www.aub.edu.lb/ifi/Documents/Syrian-Civil-Society-From-the-Beginning-to-the-War.pdf>.

<sup>60</sup> Rama Najmeh, *#Breaking\_The\_Mold Arab Civil Society Actors and their Quest to Influence Policy-Making*, Issam Fares Institute for Public Policy and International Affairs 2 available at <https://www.aub.edu.lb/ifi/Documents/Syrian-Civil-Society-From-the-Beginning-to-the-War.pdf>.

<sup>61</sup> Steven Heydemann, *Upgrading Authoritarianism in the Arab World* (2007) The Saban Center for Middle East Policy and the Brookings Institution 8-12 available at <https://www.brookings.edu/wp-content/uploads/2016/06/10arabworld.pdf>.

<sup>62</sup> Rama Najmeh, *#Breaking\_The\_Mold Arab Civil Society Actors and their Quest to Influence Policy-Making*, Issam Fares Institute for Public Policy and International Affairs 2 available at <https://www.aub.edu.lb/ifi/Documents/Syrian-Civil-Society-From-the-Beginning-to-the-War.pdf>.

of war crimes and human rights abuses to be used in international courts or future transitional justice processes.

Despite the severe limitations imposed by the conflict and the geopolitical complexities, the Syrian diaspora and international NGOs have managed to keep international attention focused on the need for accountability for all the atrocities committed in Syria. They also play a crucial role in providing support to refugees and displaced persons.

### Lessons Learned and Relevance for the Iranian Context

For Iran, an effective transitional justice process is indispensable for addressing its past and current human rights issues and moving towards a more democratic and just society. CSOs, with their commitment to human rights and grassroots connections, are uniquely positioned to lead these efforts. By documenting abuses, advocating for justice reforms, educating the public, and facilitating reconciliation, Iranian civil society can help steer the country toward a future marked by peace and respect for human rights. The experiences from Iraq, and Syria provide a blueprint for action, demonstrating the transformative impact civil society can have in challenging contexts. The following recommendations provide a roadmap for effective civil society engagement:

- Comprehensive Training Programs

In the Syrian context, criticism has emerged concerning the involvement of civil society in transitional justice initiatives due to insufficient training in transitional justice.<sup>63</sup> Iranian CSOs are therefore encouraged to participate in comprehensive training programs on transitional justice. These programs should be designed to provide in-depth knowledge of the principles, strategies, and best practices of transitional justice. Training should also focus on practical skills for documentation, advocacy, and community engagement to ensure that those leading the efforts are well-equipped to handle the complexities of transitional justice processes.

- Documentation and Reporting

Taking a cue from the Syrian experience, where civil society has adeptly documented human rights abuses despite the ongoing conflict, Iranian civil society should prioritize the

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<sup>63</sup> [https://lb.boell.org/sites/default/files/transitional\\_justice\\_paper\\_final.pdf](https://lb.boell.org/sites/default/files/transitional_justice_paper_final.pdf).

meticulous documentation of human rights violations. This involves creating detailed records of abuses, collecting evidence, and securing testimonies from victims and witnesses. Such documentation not only aids in future legal and accountability processes but also serves as a historical record that counters denialism and helps the society in remembering and understanding the past atrocities. In a context where the state might suppress information, the role of civil society in documentation becomes an act of preserving truth and ensuring that the narrative of the oppressed is heard and acknowledged.

- Advocacy and Mobilization

Inspired by Iraqi and Sri Lankan civil societies, which have been relentless in their advocacy for robust transitional justice mechanisms, Iranian civil society needs to enhance its efforts in advocacy and mobilization. This includes lobbying for the establishment of comprehensive transitional justice frameworks that encompass truth commissions, reparations, and institutional reforms. Civil society must also mobilize both domestic and international support to exert pressure on the government to adhere to these mechanisms. Building coalitions and partnerships with international human rights organizations can amplify their voice and provide the necessary leverage against a resistant or uncooperative government.

Additionally, Iranian civil society could also embark on widespread public education campaigns about human rights and transitional justice. Educating the public enhances general awareness and support for justice processes, cultivates a culture that upholds democratic values, and fosters a greater understanding of the importance of human rights. These educational efforts can take various forms, such as workshops, seminars, and media campaigns, and should aim to reach a broad segment of the population, including youths, who are crucial for the long-term sustainability of these values.

- Proactive Reconciliation Efforts

Drawing on lessons from Sri Lanka and Iraq, where civil society has played a significant role in fostering reconciliation, Iranian civil society should prepare to facilitate reconciliation processes. This involves promoting tolerance and understanding across diverse ethnic, religious, and political groups, which is essential for healing and building a cohesive society. Activities could include facilitating dialogues, conducting peace education programs, and creating spaces for different community groups to share their experiences and grievances. These efforts are vital for addressing the underlying issues that have fueled division and conflict, thus contributing to long-term peace and stability.

- Development of a Strategic Framework

To avoid the pitfalls of resource wastage and duplication of efforts, Iranian CSOs should adopt a strategic framework for their transitional justice initiatives. This framework should outline clear objectives, milestones, and timelines for all activities related to transitional justice. It should also include mechanisms for regular assessment and adaptation to ensure that the initiatives remain aligned with the evolving needs of the society and the justice process.

The establishment of coordination mechanisms among various CSOs and other stakeholders is also crucial. These mechanisms can take the form of a coalition or a formal network that facilitates regular communication and collaboration among organizations working on transitional justice. By coordinating efforts, CSOs can avoid overlapping activities, share resources more efficiently, and strengthen their collective impact.

- Building Trust and Inclusivity

Given the potential tensions between different communities and the general hostility towards transitional justice initiatives in some regions, Iranian civil society should prioritize building trust and fostering inclusivity. This involves engaging with all segments of society, particularly marginalized and affected groups, to ensure that their voices are heard and their needs are addressed in the transitional justice process. Efforts should be made to mediate between conflicting parties and promote a culture of dialogue and reconciliation.

### The Role of Faith-Based Actors in Transitional Justice

Especially in countries where religion plays a key role in civic and political life, the inclusion or exclusion of faith-based actors in the transitional process is crucial to the success of the transition. Depending on the specific context, faith-based actors have the potential of strengthening or weakening the transitional justice process. Across domestic policymakers, local civil society groups, and the international community stakeholders that may come together, it may be advisable to create a “realistic assessment of potential risks, limitations and opportunities that accompany such a decision and an exploration of the multiple, innovative roles religious leaders might play in pursuing truth, justice and reconciliation.”<sup>64</sup> Where there is relative religious homogenization, faith-based actors may have a broader reach and more legitimate platform to pursue and encourage transitional justice.

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<sup>64</sup> Glob. Initiative for Just. Truth and Reconciliation, *Religious Leaders and Transitional Justice*, 5 (2021) available at <https://gijtr.org/wp-content/uploads/2021/12/Religion-and-TJ-final.pdf>.



Faith-based leaders have the potential of strengthening the credibility of the transitional government by simply showing their support for transitional justice mechanisms. State practice shows that faith-based actors can be some of the “most visible and effective leaders” calling for transitional justice mechanisms to be employed in communities emerging from conflict and repression because of their community-facing roles.<sup>65</sup> If religious leaders are involved in the transitional justice process, it is more likely that religious communities will trust the process as a whole and actively engage in its components, including judicial and non-judicial processes, by participating in truth and reconciliation mechanisms, or testifying as victims or survivors in judicial processes.

Engaging faith-based actors in the transitional justice process from the beginning could play a key role in ensuring that those segments of the society that support a central role of religion or more generally faith in public life are not underrepresented or not represented at all by the decisions of the transitional government and thus, minimize the risks of obstruction and opposition. For example, including faith-based actors in the transitional justice process at the stage of development of the transitional justice plan will ensure that policies and laws implemented throughout the process adequately address the needs and concerns of all religious groups and enjoy long-term support among communities.

On the other hand, where faith-based actors have participated in violence that occurs in a given conflict, the role and influence of the religious leaders may need to be minimized so as to avoid any potential undermining of the process and risk that victims may decline to participate. It is important to understand whether religious actors have maintained or reduced their community trust as a result of their participation in underlying violence or lack thereof to assess whether their participation in the transitional justice process will contribute to its success or failure.

For example, In Colombia and Guatemala, religious actors played a key role in human rights documentation and truth-seeking processes, in part thanks to the community-based outreach efforts taken to build significant networks over many decades.<sup>66</sup> However, in Rwanda<sup>67</sup> and Northern Ireland, faith-based actors were closely aligned with the violence and oppression promulgated by the prior governments in power and therefore may have served to “delegitimize

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<sup>65</sup> Glob. Initiative for Just. Truth and Reconciliation, *Religious Leaders and Transitional Justice*, 2 (2021) available at <https://gijtr.org/wp-content/uploads/2021/12/Religion-and-TJ-final.pdf>.

<sup>66</sup> Glob. Initiative for Just. Truth and Reconciliation, *Religious Leaders and Transitional Justice*, 3 (2021) available at <https://gijtr.org/wp-content/uploads/2021/12/Religion-and-TJ-final.pdf>.

<sup>67</sup> Rwanda is discussed in detail in the following section.

the truth-telling and accountability processes.”<sup>68</sup> The following two case studies illustrate how religion can contribute to a transitional justice process.

### Comparative State Practice

- Rwanda

In Rwanda, religion contributed to the many complex socio-political forces that came to a head in 1994 resulting in the Rwandan genocide leading Christian churches and their leaders to the forefront of the conflict, by contributing to the “vast number of victims and perpetrators” and “very high level of social involvement in the genocide and strong social polarization.”<sup>69</sup>

Christianity has been a prominent aspect of society and culture dating back to the colonial era. In the 60's, Christian churches became generally entrenched in the Rwandan political establishment. They were allied with the national government and were involved in domestic power struggles.<sup>70</sup> Churches derived power from the resources and influence they held in Rwandan society, and “clearly played an important part over a long period in helping to organize support for the [central government] and adding to its legitimacy.”<sup>71</sup> “The leaders of the Catholic, Anglican, Presbyterian, and Baptist churches were all close associates of President Habyarimana and his government, and local pastors and priests were often closely allied with local burgomasters and communal councilors.”<sup>72</sup>

It is in this context that Church leaders have been accused by scholars and courts of participation in the 1994 genocide both affirmatively and passively. For example, Father Wencelas Munyeshyaka has been accused of colluding with the Hutu militia,<sup>73</sup> while Father Anthanase Seromba, a Catholic priest, and Elziphan Ntakirutimana, a regional leader of the Seventh Day Adventist Church, were prosecuted at the International Criminal Tribunal for Rwanda (“ICTR”) for their roles in the genocide.<sup>74</sup> However, beyond affirmative participation in the genocide, Churches have been widely criticized for “sins of omission” in failing to take a

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<sup>68</sup> Glob. Initiative for Just. Truth and Reconciliation, *Religious Leaders and Transitional Justice*, 3 (2021) available at <https://gijtr.org/wp-content/uploads/2021/12/Religion-and-TJ-final.pdf>.

<sup>69</sup> Pietro Sullo, *Lois Memorielles in Post-Genocide Societies: The Rwandan Law on Genocide Ideology Under International Human Rights Scrutiny*, 27 Leiden J. Int. L. 419, 423 (2014).

<sup>70</sup> Timothy Longman, *Church Politics and the Genocide in Rwanda*, 31 J. Religion in Africa 163, 164 (2001).

<sup>71</sup> Timothy Longman, *Church Politics and the Genocide in Rwanda*, 31 J. Religion in Africa 163, 164, 166 (2001).

<sup>72</sup> Timothy Longman, *Church Politics and the Genocide in Rwanda*, 31 J. Religion in Africa Longman 163, 166 (2001).

<sup>73</sup> Marcus Timothy Hayward, *Church and State in Rwanda: Catholic Missiology and the 1994 Genocide Against the Tutsi*, Independent Study Project Collection, 23 (2018).

<sup>74</sup> Marcus Timothy Hayward, *Church and State in Rwanda: Catholic Missiology and the 1994 Genocide Against the Tutsi*, Independent Study Project Collection, 23 (2018); Timothy Longman, *Church Politics and the Genocide in Rwanda*, 31 J. Religion in Africa Longman 163, 181 (2001).

stand against the violence and instead fostering the culture of ethnic discrimination that contributed to the conflict.<sup>75</sup> Religious institutions that have been accused of spreading “genocide ideology” include: the Catholic Church, the Association of Pentecostal Churches in Rwanda, Jehovah’s Witnesses, Seventh Day Adventists, the International United Methodist Church, and the Mennonites.<sup>76</sup> The transition from the 1994 genocide in Rwanda thus offers a case study in which religious actors in positions of political authority participated widely in the underlying conflict.

The transitional justice processes adopted in Rwanda have aimed to offer a range of alternatives that are both retributive and restorative, but faith-based actors’ involvement has largely been on the side of the accused in a retributive setting. Rwanda’s retributive approach has been predominantly defined by the prosecution of participants in the genocide (including faith-based actors) at the ICTR and domestic courts. Faith-based actors have exerted little influence over these judicial processes, and they have similarly done little to facilitate the administration of transitional justice on either a policy or practical level.<sup>77</sup> However, while formal judicial processes have been the primary focus of Rwanda’s transition, there have been select instances of faith-based actors’ involvement in restorative or reconciliatory approaches.

While the focus of Rwanda’s transitional justice initiatives has been primarily grounded in judicially crafted retributive remedies with certain restorative elements mixed in, there have also been a number of restorative or reconciliatory transitional justice processes in which faith-based actors have been involved. For example, faith-based actors have engaged in memorialization and remembrance. In the Bugasera district, the Ntarama Church has been converted into a memorial to victims of a massacre that occurred at that site in April 1994.<sup>78</sup> Similarly, the Interfaith Mediation Center in Nigeria has supported the commemoration of the Rwandan genocide.<sup>79</sup> While this transitional justice initiative took place outside of Rwanda, it nonetheless demonstrates how faith-based actors can engage in transitional justice processes from neighboring countries with shared geographical or cultural traits.

Faith-based actors have also issued apologies for the involvement of their religious institutions in the genocide. This includes issuing “statements of repentance” and “conduct[ing]

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<sup>75</sup> Timothy Longman, *Church Politics and the Genocide in Rwanda*, 31 J. Religion in Africa Longman 163, 166 (2001).

<sup>76</sup> Pietro Sullo, *Lois Memorielles in Post-Genocide Societies: The Rwandan Law on Genocide Ideology Under International Human Rights Scrutiny*, 27 Leiden J. Int. L. 419, 442 (2014).

<sup>77</sup> Daniel Philpott, *What Religion Brings to the Politics of Transitional Justice*, 61 Colum. J. Int’l Affairs 93, 104 (2007).

<sup>78</sup> Bruce L. Ottley & Theresa Kleinhaus, *Confronting the Past: The Elusive Search for Post-Conflict Justice*, 45 Irish Jurist 107, 140 (2010).

<sup>79</sup> *Interfaith Mediation Centre Commemoration of Rwandan Genocide*, URI.org (May 13, 2016) <https://www.uri.org/uri-story/20160513-interfaith-mediation-centre-commemoration-rwandan-genocide-2016>

reconciliation efforts within civil society.”<sup>80</sup> The Presbyterian Church issued the “Confession of Detmold” in 1996, the first such confession of guilt on the part of a church involved in the genocide.<sup>81</sup> The Archbishop of Canterbury issued an apology as a representative of the Anglican Church, and Pope Benedict and Pope Francis have issued apologies, including calling on Catholic clergy members to participate in the transitional justice process.<sup>82</sup>

Finally, religious leaders have built concepts of reconciliation into their theology. For example, the president of the Presbyterian Church of Rwanda noted during an interview in 2016 that his priorities were “[f]irst, evangelization and church growth, second, reconciliation. But both go together.”<sup>83</sup> The Presbyterian Church has also founded a training center to train religious leaders on principles of peace and reconciliation in the course of their religious practice.<sup>84</sup>

Efforts from religious leaders during the post-genocide period have drawn both praise for contributing towards a sustainable peace and criticism for emphasizing peace and forgiveness while deemphasizing truth and justice.<sup>85</sup> One scholar notes that “[b]y demonstrating the constructive resources of the Christian religion for overcoming violence, [religious actors] help counter the same religion’s destructive force as displayed before and during the genocide.”<sup>86</sup> However, another commentator notes that “[i]f the [Pentecostal] church contributes to the process of justice, unity can be re-established among Rwandans in general, and among Christians in particular . . . but the Pentecostal movement has barely been emphasizing justice in their reconciliation strategy or their interpretation of the concept.”<sup>87</sup> Focusing on peace and

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<sup>80</sup> Daniel Philpott, *What Religion Brings to the Politics of Transitional Justice*, 61 Colum. J. Int’l Affairs 93, 104 (2007).

<sup>81</sup> Christine Schliesser, *From ‘a Theology of Genocide’ to a ‘Theology of Reconciliation’? On the Role of Christian Churches in the Nexus of Religion and Genocide in Rwanda*, 9 Religions, 8 (Jan. 23, 2018); Martin Kimani, *For Rwandans, the Pope’s Apology Must be Unbearable*, THE GUARDIAN (Mar. 29, 2010) <https://www.theguardian.com/commentisfree/belief/2010/mar/29/pope-catholics-rwanda-genocide-church>; Harriet Sherwood, *Pope Francis Asks for Forgiveness for Church’s Role in Rwanda Genocide*, The Guardian (Mar. 20, 2017) <https://www.theguardian.com/world/2017/mar/20/pope-francis-asks-for-forgiveness-for-churchs-role-in-rwanda-genocide>.

<sup>82</sup> Roger Duthie and Paul Seils, eds., *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (New York: ICTJ, 2017), pp. 302-343, (electronic version available at <https://ssrn.com/abstract=2941579>, p. 18).

<sup>83</sup> Christine Schliesser, *From ‘a Theology of Genocide’ to a ‘Theology of Reconciliation’? On the Role of Christian Churches in the Nexus of Religion and Genocide in Rwanda*, 9 Religions, 9 (Jan. 23, 2018).

<sup>84</sup> Christine Schliesser, *From ‘a Theology of Genocide’ to a ‘Theology of Reconciliation’? On the Role of Christian Churches in the Nexus of Religion and Genocide in Rwanda*, 9 Religions, 9 (Jan. 23, 2018).

<sup>85</sup> Christine Schliesser, *From ‘a Theology of Genocide’ to a ‘Theology of Reconciliation’? On the Role of Christian Churches in the Nexus of Religion and Genocide in Rwanda*, 9 Religions, 11 (Jan. 23, 2018).

<sup>86</sup> Christine Schliesser, *From ‘a Theology of Genocide’ to a ‘Theology of Reconciliation’? On the Role of Christian Churches in the Nexus of Religion and Genocide in Rwanda*, 9 Religions, 11 (Jan. 23, 2018).

<sup>87</sup> Josephine Sundqvist, *Reconciliation as a Societal Process: A Case Study on the Role of the Pentecostal Movement (ADEPR) as an Actor in the Reconciliation Process in Post-genocide Rwanda*, 99 Swedish Missiological Themes 157, 169 (2011).

forgiveness as principles that religious leaders can contribute to the transitional process may lend credibility to the position of faith-based actors in Rwandan society, but the lack of focus on justice and accountability—perhaps because of the pervasive role of religious actors as perpetrators during the genocide—undermines that same public trust.

- Tunisia

Before the 2011 revolution, Tunisia was considered one of the most secular nations in the Arab region. The first president of the independent Tunisia, Habib Bourguiba (in office between 1957-1987), pursued a secularization program that attempted to remove religion from the public sphere, including secularizing the education, banning headscarves for women, abolishing Sharia courts, and repressing Islamist movements in the state, including protests associated with the Islamic Tendency Movement (later the Ennahda party). Islamist movements only had a short period of presence and influence after the *coup d'état* in 1987, before they were again shut down by Zine El Abidine Ben Ali. During Ben Ali's rule, parties and groups with religious affiliations, such as Ennahda, Hezbollah, and Islamic Jihad, were banned.

This may be put in stark contrast to the post-revolution popularity of the Ennahda party, later self-proclaimed as a democratic Islamic party, which in the 2011 national assembly elections gained around 40 percent of the popular vote. Ennahda became part of the Troika government during the period of 2011 to 2014, along with the social democratic party Ettakatol, and the center-left party Congress for the Republic (CPR). Following Ennahda's defeat in 2014, it joined a coalition government with the secularist party Nidaa Tounes, up until the 2019 elections. The initial success of Tunisia's transition was attributed to the ultimate compromise of these two parties.<sup>88</sup>

Following the 2011 revolution, a transitional justice process was established to address the state's past experiences with human rights violations and political repressions. In 2012, the Ministry of Human Rights and Transitional Justice launched a national consultation including surveys and questionnaires by six regional consultative commissions. The result of the national consultation led to the adoption of Tunisia's Organic Law on Transitional Justice, in 2013. The law established the Truth and Dignity Commission (TDC) and mandated the TDC with the task of identifying zones that have "suffered systematic marginalization or exclusion" and proposing reparation for structural violations suffered.<sup>89</sup> The Commission received over 60,000 complaints

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<sup>88</sup> Sarah Yerkes & Zeineb Ben Yahmed, *Tunisia's Political System: From Stagnation to Competition*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 28, 2019), <https://carnegieendowment.org/2019/03/28/tunisia-s-political-system-from-stagnation-to-competition-pub-78717>; Jonathan Laurence, *Tunisia, The Courage of Compromise*, BROOKINGS (Feb. 5, 2015), <https://www.brookings.edu/opinions/tunisia-the-courage-of-compromise/>.

<sup>89</sup> Organic Law on Establishing and Organizing Transitional Justice (Tunisia), *unofficial translation available at* <https://www.ohchr.org/sites/default/files/Documents/Countries/TN/TransitionalJusticeTunisia.pdf>.

from victims for its report. Its work included public hearings and the collection of testimonies from victims and perpetrators.<sup>90</sup>

Other bodies were also established to oversee the transitional justice process, including judicial chambers established within the Tunisian judicial system to prosecute those responsible for human rights abuses. The chambers were tasked with investigating and trying cases referred to them by the Truth and Dignity Commission, as well as other cases related to human rights abuses. However, the trials have faced many obstacles, including difficulties to compel witnesses and defendants to appear, and no judgments have been handed down so far.<sup>91</sup>

The Organic Law does not mention Islam, religious leaders or mosques, but notes that the members of the TDC should include “a specialist in religious sciences”,<sup>92</sup> despite the strong support for the political role of Islam in Tunisia at the time.<sup>93</sup> Yet, religion has and is still playing an important role in the transitional process and political debate in Tunisia. In particular, since Islamists were considered the largest group of victims, they dominated the process.<sup>94</sup> Moreover, the state's political crises in 2013 to 2014, the period that led up to the 2014 election and the drafting of the 2014 constitution, was mainly driven by a secularist-Islamist polarization following two assassinations of secular opposition leaders. While the 2014 constitution, which was a result of a compromise between the secularists and Islamists, had many references to Islam, the 2022 constitution, adopted under the sitting President Kais Saied and replacing the 2014 constitution, goes much further, stipulating that the state has a duty to achieve the purpose of Islam in preserving people’s souls, money, religion, and freedom.<sup>95</sup>

Over a decade since the revolution, the democratic transition in Tunisia has stalled. Scholars argue that, while the consensus model was important to stabilize the state in the midst

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<sup>90</sup> Truth & Dignity Commission, *The Final Comprehensive Report* (May 2019), [https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2020/11/Tunisia-Truth-and-Dignity-Commission-Report\\_executive\\_summary\\_report.pdf](https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2020/11/Tunisia-Truth-and-Dignity-Commission-Report_executive_summary_report.pdf).

<sup>91</sup> Eric Goldstein, *Transitional Justice in Tunisia—a Transition to What?* Atlantic Council (Jan. 22, 2019), <https://www.atlanticcouncil.org/blogs/new-atlanticist/transitional-justice-in-tunisia-a-transition-to-what/>.

<sup>92</sup> Organic Law on Establishing and Organizing Transitional Justice (Tunisia), *unofficial translation available at* <https://www.ohchr.org/sites/default/files/Documents/Countries/TN/TransitionalJusticeTunisia.pdf>.

<sup>93</sup> Pew Research Center, *Most Muslims Want Democracy, Personal Freedoms, and Islam in Political Life: Few Believe U.S. Backs Democracy* (Jul. 10, 2012), <http://www.pewglobal.org/2012/07/10/chapter-3-role-of-islam-in-politics/>.

<sup>94</sup> Maaïke Voorhoeve, *Transitional Justice in Tunisia*, MEI@75 (Feb. 27, 2014), [https://www.mei.edu/publications/transitional-justice-tunisia#\\_ftn19](https://www.mei.edu/publications/transitional-justice-tunisia#_ftn19).

<sup>95</sup> Rashed Masoud Hafnaoui, *Implications of the Role of Religion in Tunisia’s New Constitution for Non-Muslims Movement in Tunisia*, Religious Freedom Inst., <https://religiousfreedominstitute.org/implications-of-the-role-of-religion-in-tunisias-new-constitution-for-non-muslims-movement-in-tunisia/>.

of political crises, it did not “move the country forward at the legislative level.”<sup>96</sup> More specifically, it did not put an end to ideological polarization and bring any “unity and policy coherence, but rather stagnation on most key policy matters.”<sup>97</sup> Instead, the coalition’s domination of more than 80 percent of the parliament seats and without meaningful political opposition, led to the avoidance of any structural economic reforms and a threat to the democratic process.<sup>98</sup>

### Lessons Learned and Relevance for the Iranian Context

While Rwanda has some obvious differences from Iran, there remain a number of best practices or lessons learned from the Rwanda case study that could be applied or adapted in a transitional justice environment in Iran. In particular, Rwanda, like Iran, is a state where faith-based actors played a prominent role in the political sphere and participated widely in events underlying the conflict for which transitional justice processes are necessary.

Rwanda’s history and transitional justice frameworks demonstrate how retribution can be a priority for victims of conflict, particularly where, as in Iran, there is wide and systemic participation in the events necessitating a transitional justice process. Understandably, victims and their loved ones often prioritize accountability in a judicial sense. However, the Rwanda case study offers insight into what can happen when focusing too heavily on retributive mechanisms. Specifically, the result can be lack of due process, politicization of trials, court inefficiencies, and corruption, among other things. Retributive mechanisms thus must be designed carefully and applied in a way to comply with international standards for fair trials, judicial and prosecutorial independence, and due process. Similarly, although an international criminal tribunal supported by the international community may present an enticing possible solution, it must be implemented in a way that serves justice. This means, at a minimum, ensuring access for victims, cost and judicial efficiency, local buy-in, and due process for the accused. Many of the issues associated with an overemphasis on retributive approaches are furthermore already prevalent in the Iranian context today—e.g., overcriminalization, politicization, corruption, lack of due process—and would likely be considered contributing factors to the need for any transitional process in the future. It is thus critical for purposes of

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<sup>96</sup> Sarah Yerkes & Zeineb Ben Yahmed, *Tunisia’s Political System: From Stagnation to Competition*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 28, 2019), <https://carnegieendowment.org/2019/03/28/tunisia-s-political-system-from-stagnation-to-competition-pub-78717>.

<sup>97</sup> Sarah Yerkes & Zeineb Ben Yahmed, *Tunisia’s Political System: From Stagnation to Competition*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 28, 2019), <https://carnegieendowment.org/2019/03/28/tunisia-s-political-system-from-stagnation-to-competition-pub-78717>.

<sup>98</sup> Sarah Yerkes & Zeineb Ben Yahmed, *Tunisia’s Political System: From Stagnation to Competition*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 28, 2019), <https://carnegieendowment.org/2019/03/28/tunisia-s-political-system-from-stagnation-to-competition-pub-78717>.

maintaining public trust in the integrity of any transitional process in Iran that any retributive system that is established be designed with adequate procedures and safeguards.

Retributive mechanisms should be complemented by a multi-faceted approach involving non-retributive elements. This may include hybrid systems involving both retributive and restorative or reconciliatory elements, similar to the Gacaca courts, though due process protections and other considerations relating to a retributive approach cannot be overlooked. More traditional restorative or reconciliatory mechanisms can also be effective, and they provide an opportunity for faith-based actors to meaningfully participate in the transitional justice process. For example, practices like apologies, memorialization, and commemoration can be constructive in establishing systems for truth-telling, peace building, and forgiveness. These practices can be an effective way for faith-based actors to engage their local communities and generate support for the transitional process, particularly in a state like Iran where religious leaders play such a prominent role in government and society. Furthermore, faith-based actors may be more willing to participate in transitional justice initiatives that are reconciliatory in nature rather than subjecting those actors to criminal liability through formal judicial processes. Faith-based actors in Iran may be more willing to engage in non-judicial processes for that reason. To the extent faith-based actors are able to affirmatively contribute towards the transitional process, building principles of reconciliation into their theology can help to strengthen their credibility. However, principles of justice and accountability should not be overlooked.

Similar to Iran's experience from the Pahlavi dynasty, the aggressive attempts by Habib Bourguiba and Ben Ali to enforce western models of secularization in Tunisia were unsuccessful on both a cultural and political level. Modernization efforts should not be top-down initiatives that attempt to erode indigenous traditions, but rather be an organic result of political and economic development. Similarly, secularization efforts should not stand in contrast to religious freedom, freedom of expression, and tradition, it should not imply hostility and create more tension among people.

The stark contrast between the people's strong support for the political role of Islam in Tunisia and the lack of involvement of religious leaders in the adopted transitional justice process is also noteworthy. Perhaps in that context, given the recent political developments in the state, engagement from religious leaders would have helped to strengthen and legitimize the process.

Lastly, Tunisian case study also highlights the importance of political plurality in a transition to a democratic society, which may be very difficult to accomplish in a state where authoritarian rule has long worked towards eliminating all opposition and political organizations.



A transitional process in Iran should consider implementing measures that promote political and civic engagement and organization in the society.

Overall, the type and level of appropriate involvement of religious actors in any transitional justice process should depend on their legitimacy in each context. The ongoing protests in Iran are in many ways a direct response to the mistrust not only against the sitting government, but against the political system as a whole. In Iran, Islam has been at the very core of the political and judicial systems, and religious actors have in various ways, formally and informally, had profound influence on the shaping and execution of the system. Moreover, some religious actors have played a key role in mass atrocities and other human rights violations, either directly or indirectly. At the same time, religion has played an important role in shaping the social and cultural life in Iran, and many Iranians are religious. Religious leaders may therefore play a crucial role in promoting reconciliation, understanding, and healing in the community, by for example engaging in interfaith discussions and truth commissions.

### Balancing Progressive and Conservative Views

One of the key challenges that the transitional justice government is likely to face with regards to credibility is the opposition of the most conservative members of the Iranian political community. Iran is traditionally and historically a Shia Islamic country in which religion and politics remain intrinsically connected within some segments of society/within particular groups and particular regions. Islam and the clergy have been an important part of Iranian history. Already in the amendment to the first Constitution, in 1907, Twelver Shi'ism was declared as the state religion and a clerical council was given the authority to invalidate laws that were against the principles of Islam. The role of religion was further strengthened by the current Constitution of the Islamic Republic of Iran, which instead stipulates that all "civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria." It is therefore likely that some groups will consider the transitional justice framework a deviation from "the path of God" and from Islam, especially if it intends to implement human rights-based norms often associated with the democratic politics embraced in western countries. Such opposition must be calculated upfront because it has the potential to become violent and to seriously undermine the transitional justice process as a whole. In light of this, the transitional justice government may want to devise an effective and widely-endorsed strategy that focuses on preventing such opposition by recognizing the role that Islam may play in the transitional justice process.

In setting up the transitional justice process, in particular the accountability framework to hold perpetrators of international crimes accountable, the transitional government will need to ensure that its plan fully aligns with human rights standards. One of the most debated topics in

this regard concerns the forms of punishment. Especially in countries like Iran, which currently allows the death penalty and brutal forms of punishment, considered as torture and/or inhumane or degrading punishment under international human rights law, the forms of punishment that the transitional justice government decides to adopt will tell much about its human rights agenda. Resorting to dehumanizing punishments, similar to those used by the current regime, are likely to imprison the country within a new cycle of violence and vengeance, contributing to an increasingly violent culture, where perpetrators of old atrocities are punished with new atrocities. In such a case, the new government will not only communicate a message of repeated violence and revenge to the Iranian community generating more hatred and division, and therefore undermining the efforts to promote peace and stability in the country, but it will also inevitably fail to comply with widely accepted human rights standards. Aside from the obvious ramifications for Iranian communities of failing to implement human rights standards during the transition, this would continually impact international attitudes towards Iran. Sending the message that Iran is not breaking with its violent and brutal past, it is not pursuing a different human rights agenda and will prompt internal discontent and further isolation from the international community. In light of this, the Iranian transitional justice government should carefully choose the norms and forms of punishment it intends to apply. Implementing high standards of human rights protection in the transitional justice process will also meet the expectations of the younger generations and more democratic groups that fully embrace a progressive, human rights approach.

On the other hand, transitional justice actors should be wary of the perceptions that the adoption of a human rights agenda may trigger due to the history of Iran. The transitional government shall be ready to mitigate the risk that its human rights agenda is perceived by some groups as an attempt to secularize and westernize the country, especially if it is supported by western countries, and relatedly as an "attack" on Islam. The history of Iran demonstrates that such perceptions are likely to trigger fierce opposition. It is evident from the history of Iran that the aggressive westernization and secularization attempts of the Pahlavi dynasty severely backlashed. The complete disregard of tradition and of the indigenous and socio-cultural context seemed to have instead created larger gaps in Iranian society, which in part led to the massive support for the establishment of an Islamic Republic. Similarly, the ongoing protests today are in many ways a strong backlash against the cultural revolution of the Islamic Republic.<sup>99</sup> This demonstrates that even the imposition or superficial application of democratic norms may be rejected by the community.

In this regard, advocacy initiatives aimed at building a transitional justice and human rights culture in Iran can play a key role. Such initiatives shall aim to educate the Iranian public

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<sup>99</sup> Kian Tajbakhsh, *The Culture War Behind Iran's Protests*, WALL STREET J. (Nov. 11, 2022), <https://www.wsj.com/articles/the-culture-war-behind-irans-protests-11668179018>.

of the rationale behind the selection of a human-rights-based accountability process, which may be misjudged by many as promoting too lenient and moderate punishments for perpetrators of atrocious crimes. They should also mitigate the expectations of the Iranian community to obtain justice for all the crimes committed by the regime and avoid public discontent and distrust of the transitional justice system that could lead to chaos and violence in the country and seriously undermine the process of transition. In addition, advocacy activities should aim to engage different sectors of the society in setting up the accountability framework to ensure that the process is not perceived as a distant government-led initiative but rather as a community-led process. The role of faith-based actors will be key in this process as it will signal that there is space for religion in the transitional justice process and that it is possible to reconcile transitional justice, including international human rights standards, with Iranian traditions and culture.

Overall, this will contribute to gathering more support for the transitional justice process among communities, even among conservatives, increasing its credibility in the long term and minimizing the chances of undermining attacks from opposing factions. In fact, it is of utmost importance that the transition is widely supported across ethnic lines, religious groups, geographical areas, and generations.

### *Considerations on Transitional Justice*

Overall, transitional justice is a complex process that needs to be well strategized to be successful. At the stage of development of a plan for transition in Iran, it is necessary to take into consideration: (i) the typology of transition Iran is going through and its peculiarities, including challenges and risks; (ii) based on the assessment of challenges and risks, the most adequate transitional justice processes for Iran; (iii) actors and attitudes that may undermine or strengthen the credibility and legitimacy of the transitional justice process; and (iv) balancing progressive and conservative community demands. In this regard, a transition government will need to consider:

- Most often, transitional justice processes are triggered by regime change and aim to lead a country through a democratic process with the hope that it will bring peace and reconciliation.
- The recent history of Iran contains examples of certain types of transitions although as of yet none to a democracy. An understanding of these transitions may help inform present strategies for a democratic transition in Iran.
- The recent history of Iran is a story of cultural war and division, and a story of authoritarian rule. This implies that any future transitional process that attempts to achieve modernization and secularization should first and foremost focus on political

development and economic growth, including strong participation of civil society, and implementation of anti-corruption measures and measures that address inequality.

- The Islamic Republic is based on a complex system of governance centered on Islamic law. The political landscape is defined by both formal and religious institutions as well as informal networks and key personalities that interplay, such as the Supreme Leader. This peculiarity cannot be disregarded in the process of transition: any change in the governance structure cannot be abrupt and must be acceptable for the Iranian community based on its political experience and norms.
- The transitional justice process shall account for the diversity of the Iranian people. It is recommended that the transitional justice government takes a gradual approach that does not radically change all the norms in the country or remove the religious leaders from the political scene overnight.
- Generally, civil society actors can play a key role in transitional justice - they may strengthen or weaken the credibility and legitimacy of the process depending on the specific context. In Iran, civil society is represented by civic unions, syndicates, political groups, ethnic or minority groups, as well as faith-based actors. For the transitional justice process to be successful, it is important to assess the role that these groups may have in the process and, if adequate, engage them in the process from the beginning.
- Religion and politics are closely connected in Iran. It is important to acknowledge the role that religion and religious actors can play in the transitional justice process and how their engagement or absence can affect the legitimacy and credibility of the process.
- The new transitional justice government might find it beneficial to engage faith-based actors to balance the secular and human rights aspirations of some of the segments of the Iranian society with the more traditionalist and religious views, and design an effective and well balanced transitional justice process.
- In Iran, engaging faith-based actors in the process is more likely to lead to long-term peace and justice as it would accompany the country in its gradual transition from an Islamic Republic to a different form of government without drastically affecting its national and religious identity, which would only cause additional chaos and frustration. This will demonstrate that the transitional justice framework is not intended to exclude certain groups and communities from the transition adding legitimacy to the process. On the contrary, it aims to include all religious groups in the process and ensure they have an opportunity to influence the decision-making process with their perspectives.

## **Justice & Accountability**

In times of armed conflict and civil unrest, atrocities are often committed on a wide scale. Individuals may be affected by civil unrest-related atrocities in two ways: (i) directly, as victims of the crime, or (ii) indirectly, being part of a community affected by the overall context of violence and hatred promoted by an autocratic and repressive regime. The community affected by such atrocities will demand that those responsible be punished and will expect the transitional government to make the establishment of an effective accountability process one of its main agenda priorities. Every day in Iran, thousands of protesters protest for the overthrow of the regime, the memorialization of the regime's victims and the prosecution of all those who have committed atrocities since 1979. A pressing transitional justice issue is therefore how a transitional government should deal with atrocities committed during the civil unrest, as well as, during the past four decades. In other words, how to deal with accountability processes.

Accountability, understood as the judicial prosecution of perpetrators of atrocities, is a crucial question for any society that embarks on a transitional justice process given the serious and long-term consequences that it will have on the country. Accountability may undermine or strengthen the chances of successful recovery in Iran and will play a key role in determining the long-term community's social, cultural, and political perception of what constitutes justice, as well as the public and political reputation of the new government in the international arena. How Iran decides to react to the perpetrators of atrocities during the transitional justice process, whether in violation or in line with human rights standards, will say a lot about the transitional government's human rights agenda for the country.

Any transitional government will encounter several challenges in setting up an adequate accountability framework for Iran. One of the main challenges is the balance between the wide extent of victimization and efficiency. Iranians are demanding justice for atrocities committed since 1979, such as the 1988 mass executions of political prisoners across Iran, which implies a large number of crimes and perpetrators to investigate. It is very unlikely that the transitional government will be able to hold perpetrators accountable for all the crimes perpetrated since 1979. This is not only because of the limited financial resources that most transitional governments can rely on, but also due to the challenges that the investigators will experience in collecting reliable evidence that meets the international standards for documentation. Furthermore, holding trials in accordance with international human rights standards for facts that occurred decades ago can be particularly challenging.

Another important challenge regards the balance that the transitional government will need to strike between the more conservative views on the future of the state, which are common among the old generations, and the more democratic thinking, which demands a radical change.

Yet, another challenge regards the combination of various transitional justice tools, other than the traditional accountability mechanisms to facilitate the peaceful and smooth transition of power from the current regime to a new government. In light of these observations, for certain crimes, the transitional government will need to consider alternative and complementary options to accountability which are more focused on providing remedy to the entire community rather than specific individuals, such as truth-seeking and memorialization initiatives, and prioritize moving forward and reaching stability, through more controversial processes such as amnesties.

Overall, the experience of other states who went through a transitional justice process demonstrates that accountability is linked to many other areas and issues of transitional justice and therefore should not be understood as a standalone issue but as part of a larger process aimed at transitioning the state from civil unrest to peace, stability, and human rights protection. Additionally, state practice demonstrates that the most effective transitional justice strategy consists of various mechanisms and institutions, both judicial and non-judicial, that work together to promote lasting peace and reconciliation.

Keeping in mind the various challenges linked to accountability and the importance of combining different processes and institutions to achieve reconciliation, peace, and stability, this section will discuss various transitional justice mechanisms, relying on comparative state practice, that the Iranian transitional government may wish to consider when designing an effective transitional justice plan. These options may be divided into two main categories: judicial and non-judicial mechanisms.

### *Judicial Mechanisms*

Accountability, understood as the judicial prosecution of perpetrators of atrocities can either complement another transitional justice process or replace one, and can be carried out on a domestic level or with the support of international criminal tribunals.

When considering setting up an accountability process, the transitional government shall first consider the goals it intends to achieve with accountability, in light of the overall purpose of the transition. Generally, the purpose of accountability programs is twofold: support reconciliation efforts, by compensating victims and punishing certain violators, and encourage trust in the government, the judicial process, and the rule of law. If these purposes fit into the

overall goal of the transitional justice process the government is designing, the government shall assess which accountability mechanism is the most effective.

Generally, states may opt for domestic, regional, or international tribunals. These bodies provide citizens with information that reconciles events that took place during the conflict and hold those people that committed crimes accountable for their conduct. States may rely exclusively on domestic prosecutions or accept the jurisdiction of regional or international mechanisms to prosecute a specific category of perpetrators or specific crimes in a complementary manner. For example, the International Criminal Court (ICC) may prosecute the most responsible for the crimes under its jurisdiction, such as the heads of state or prime ministers, while the state carries out domestic prosecutions of low-level officers.

There are a number of considerations that the transitional government should take into account when deciding whether to opt for a domestic or international prosecutorial mechanism. These considerations are discussed under the relevant option.

### Domestic Prosecutions

Domestic prosecution, in the transitional justice context, refers to a state-established mechanism for prosecuting the most serious violations of international and domestic law committed during a specific era of a state's history. These mechanisms are referred to as domestic courts or tribunals. Domestic prosecution has multiple advantages.

Domestic courts and tribunals can assist states in their transition from conflict into a society that promotes accountability, especially where no existing regional or international mechanisms have jurisdiction or can be established. Additionally, domestic prosecutions can allow for direct involvement by community members and provide states with an opportunity to seek accountability for violations completely under their own terms. When states are responsible for their own prosecutions, they can significantly strengthen respect for the rule of law and end impunity and corruption.<sup>100</sup>

Overall, prosecution through domestic tribunals can bring more immediate justice to victims, make justice mechanisms more accessible to those most affected, and allow states to develop effective criminal justice systems capable of preventing future violent conflict.<sup>101</sup> With

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<sup>100</sup> Joseph Rikhof, Fewer Places to Hide? The Impact of Domestic War Crimes Prosecutions on International Impunity, THE CENTER FOR JUSTICE AND ACCOUNTABILITY, available at <http://www.isrcl.org/Papers/2008/Rikhof.pdf>.

<sup>101</sup> Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Maximizing the Legacy of Hybrid Courts 13 (2008), available at

international support, a focus on domestic prosecutions can build capacity and spark reforms in the national judiciary.<sup>102</sup> For these reasons, post-conflict states increasingly choose to use domestic prosecutions to provide accountability for those responsible for serious violations of international law.

Examples of domestic tribunals include the International Crimes Division in Uganda's courts to prosecute those connected to the Lord's Resistance Army; Rwanda's Specialized Chambers, which prosecutes participants of the Rwanda genocide in 1994; and the special chambers in Bosnia and Herzegovina, which investigates and prosecutes crimes in connection with the Yugoslav war. Similarly, Bangladesh passed the International Crimes (Tribunals) Act to prosecute those responsible for war crimes committed during Bangladesh's 1971 liberation war with Pakistan.<sup>103</sup> Another example is that of Iraq which will be discussed in depth as a case study in this section (see also Annex 1).

When deciding whether to carry out domestic prosecutions or rely on international mechanisms, the transitional governments shall make several considerations. First of all, the transitional government will need to ensure that if it chooses to establish a domestic tribunal, it shall set up a mechanism that guarantees that domestic prosecutions align with international standards for fair trials and include the right to counsel, the right to confrontation, and the right to appeal.

Additionally, it is important to consider the state's ability to coordinate with other transitional justice mechanisms, such as truth and reconciliation commissions, documentation centers, and reparations committees. Cooperation with security forces, as well as public outreach, is also an important consideration in establishing domestic accountability mechanisms.

Finally, the transitional government will need to decide which domestic mechanism shall be tasked with the prosecution of international crimes. Options include relying on existing judicial domestic courts that make up the state's internal judicial structure (integrate domestic tribunals) or setting up a special (ad hoc) domestic court to prosecute perpetrators of atrocities, which would result in the establishment of an independent domestic tribunal. In either scenario, states may consider a variety of different issues, such as the mandate, structure, and jurisdiction of the judicial body and the establishment of substantive rights and procedural safeguards. In case, the transitional government decides to establish new domestic courts, it shall also consider

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<http://www.ohchr.org/Documents/Publications/HybridCourts.pdf>.

<sup>102</sup> Human Rights Watch, Bosnia and Herzegovina: Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina 3 (Feb. 2006).

<sup>103</sup> Caitlin Reiger, Fighting Past Impunity in Bangladesh: A National Tribunal for the Crimes of 1971, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 4-5 (2010), available at <http://ictj.org/publication/fighting-past-impunity-bangladesh-national-tribunal-crimes-1971>.



the need to enact new laws or amending the existing criminal code and rules of procedure, which will guide the trial process and function to promote fair practices. The two subsections below discuss the two options more in depth.

### Integrating existing domestic tribunals

In some states, tribunals have been integrated to a high level within the regular judiciary. In such instances, states may adapt the system of local courts, including prosecution or investigation structures, to prosecute those responsible alongside more traditional criminal cases. For instance, in Rwanda, the government established Specialized Chambers within the existing courts to manage cases related to genocide. While the Specialized Chambers had their own mandate, they were relatively integrated into the domestic judiciary.<sup>104</sup> Similarly, Uganda established the International Crimes Division as a special division of the High Court in order to prosecute serious violations of international and domestic law.<sup>105</sup> Where possible, the use of the existing structures in the national judiciary system can streamline domestic prosecutions and function to promote increased capacity throughout the legal sector. Utilizing existing structures can avoid constructing entirely new systems and might also increase the volume of prosecutions possible, depending on the level of functionality in the existing courts. If the state decides to integrate the tribunal within the existing judicial system, the structure and composition of the courts may not change drastically, except for the addition of any international personnel. However, use of existing courts might require greater resources, including additional prosecutors, judges, witness protection measures, training sessions, and data management systems, to be allocated to the tribunal from within the domestic system, which can be burdensome.<sup>106</sup>

In other states, domestic tribunals have a more extraordinary and independent basis even if they remained part of the existing judicial system. For instance, while the Bosnian War Crimes Chamber was established within the existing Court of Bosnia and Herzegovina, it was created with significant independence as part of an agreement between the Office of the High Representative – an ad hoc international institution responsible for overseeing implementation of the 1995 Dayton Peace Agreement – and the International Criminal Tribunal for the former Yugoslavia.<sup>107</sup> The War Crimes Chamber was established to investigate and prosecute persons

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<sup>104</sup> Nicholas Jones, *THE COURTS OF GENOCIDE: POLITICS AND THE RULE OF LAW IN RWANDA AND ARUSHA* 85 (2010).

<sup>105</sup> The Judiciary of the Republic of Uganda, International Crimes Division (2013), available at [http://www.judicature.go.ug/data/smenu/18/International\\_Crimes\\_Division.html](http://www.judicature.go.ug/data/smenu/18/International_Crimes_Division.html).

<sup>106</sup> Human Rights Watch, *Justice for Atrocity Crimes*, 12 (Mar. 2012), available at [http://www.hrw.org/sites/default/files/reports/bosnia0312\\_0.pdf](http://www.hrw.org/sites/default/files/reports/bosnia0312_0.pdf).

<sup>107</sup> Bogdan Ivanišević, *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, *INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE*, 1, 6 (2008), available at

allegedly involved in serious violations of international law during the Bosnian war.<sup>108</sup> Its independence from domestic political concerns was due in part to the involvement of international actors in its early years. In its initial implementation, the War Crimes Chamber utilized a number of international staff and was intended to help promote the capacity of the domestic judiciary to try war crimes under international law.<sup>109</sup> Some scholars refer to the Bosnia and Herzegovina's War Crimes Chamber as a hybrid, or internationalized, tribunal,<sup>110</sup> as it contains both national and international elements; although with the discontinuance of international staff in 2012, there is an argument that it has now become more domestic in nature.<sup>111</sup> Hybrid tribunals will be discussed later in this section.

### Creating independent domestic tribunals

An independent domestic tribunal is a specialized court or chamber with the specific mandate to investigate and prosecute serious violations of international law.<sup>112</sup> An independent domestic tribunal can be detached from the existing judicial system, which may prove to be more efficient. However, a detached tribunal may not have the trust of the population if it is perceived as being outside the established legal system.<sup>113</sup> Independent tribunals may be easier to administer and may be further removed from potential issues burdening existing domestic legal

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<http://ictj.org/publication/war-crimes-chamber-bosnia-and-herzegovina-hybrid-domestic-court>; Court of Bosnia and Herzegovina, Frequently Asked Questions, available at

<http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=15&jezik=e>.

<sup>108</sup> Bogdan Ivanišević, The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 1, 6 (2008), available at

<http://ictj.org/publication/war-crimes-chamber-bosnia-and-herzegovina-hybrid-domestic-court>; Court of Bosnia and Herzegovina, Frequently Asked Questions, available at

<http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=15&jezik=e>.

<sup>109</sup> Bogdan Ivanišević, The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 1, 6 (2008), available at

<http://ictj.org/publication/war-crimes-chamber-bosnia-and-herzegovina-hybrid-domestic-court>.

<sup>110</sup> Hybrid Tribunals and the Rule of Law: Notes from Bosnia and Herzegovina and Cambodia, 4 (May 2010), available at <http://www.uel.ac.uk/wwwmedia/microsites/chrc/HybridTribunalsandtheRuleofLaw.pdf>; Bogdan

Ivanišević, The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 1 (2008), available at

<http://ictj.org/publication/war-crimes-chamber-bosnia-and-herzegovina-hybrid-domestic-court>.

<sup>111</sup> Mathias Holvoet & Paul de Hert, International Criminal Law as Global Law: An Assessment of the Hybrid Tribunals, 17 TILBURG LAW REVIEW 228, 229 (2012), available at

<http://www.vub.ac.be/LSTS/pub/Dehert/413.pdf>.

<sup>112</sup> Open Society Foundations, Putting Complementarity into Practice: Domestic Justice for International Crimes 3-6 (2011), available at <http://www.opensocietyfoundations.org/sites/default/files/putting-complementarity-into-practice-20110120.pdf>.

<sup>113</sup> International Center for Transitional Justice, The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, 6 (2008), available at

<http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>.

systems, such as lack of funding or corruption.<sup>114</sup> They may be better suited to develop specialized expertise, establish more rigorous security procedures, and build public trust by setting clear expectations and achieving progress quickly.<sup>115</sup> However, because of the detachment from the domestic legal system, an independent tribunal may not exert much influence on the domestic system, and disparities between the tribunal and local courts may cause tension between the independent tribunal and local courts. If a state uses their existing legal system instead of a new domestic tribunal, it may adapt the system of local courts to prosecute those responsible alongside more traditional criminal cases. Sometimes these states establish a sub-chamber within their existing court system to address violations of international law.<sup>116</sup> States can also establish an independent domestic tribunal outside of the existing court system.

States consider a variety of issues when establishing and structuring a new domestic tribunal and deciding what crimes to prosecute. A state may establish a domestic independent tribunal either through domestic legislation, bilateral treaties, or treaties with the United Nations. Additionally, states may opt to incorporate international personnel, such as judges and members of the prosecution and defense teams, to perform certain functions. A state may also decide to have a victims and witnesses representative as a part of the tribunal. Other important considerations include what crimes to include in the jurisdiction of the court and the time period or events that are prosecutable. Depending on the transitional government's assessment, independent domestic tribunals can be established in several different ways. Post-conflict states can establish domestic tribunals by legislation, through peace agreements, or through cooperation with international organizations like the United Nations.

There are advantages and disadvantages to each type of independent tribunal. Passing new laws or legislation can show a conflict-affected community that the government is serious about bringing to justice those responsible for international crimes. Legislative establishment may also provide legal legitimacy to the tribunal. In 1973, the Bengali government passed the International Crimes (Tribunals) Act to prosecute those responsible for war crimes committed during Bangladesh's 1971 liberation war with Pakistan.<sup>117</sup> An amendment to this law required the creation of the International Crimes Tribunal (ICT), which was established in 2010, and

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<sup>114</sup> Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Maximizing the Legacy of Hybrid Courts 13 (2008), available at <http://www.ohchr.org/Documents/Publications/HybridCourts.pdf>.

<sup>115</sup> Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Maximizing the Legacy of Hybrid Courts 13 (2008).

<sup>116</sup> The High Court (International Crimes Division) Practice Directions art. 3 (Uganda, 2011).

<sup>117</sup> Caitlin Reiger, Fighting Past Impunity in Bangladesh: A National Tribunal for the Crimes of 1971, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 4-5 (2010), available at <http://ictj.org/sites/default/files/ICTJ-BGD-NationalTribunal-Briefing-2010-English.pdf>.

began proceedings in November 2011.<sup>118</sup> Similarly, in 2003, Iraq's transitional government passed a law that established the Iraqi Special Tribunal to prosecute Saddam Hussein and other leading Ba'athists, which will be discussed more in depth in this section.<sup>119</sup> In 2005, with the approval of the final statute, the Iraqi Special Tribunal was renamed the Iraqi High Criminal Court (IHCC).<sup>120</sup>

Some states establish domestic tribunals through agreements or treaties between parties to the conflict or with the United Nations. This method of establishment can prove the state's commitment to transitional justice to the international community and may provide support from the UN or other international organizations. For instance, the War Crimes Division of the High Court of Uganda was established as a result of the 2007 Agreement between the Government of Uganda and the Lord's Resistance Army.<sup>121</sup>

### Hybrid tribunals

Another type of tribunal is the hybrid tribunal which combines domestic and international elements. Hybrid tribunals have no standard model; yet they often share common attributes, including: (1) the application of both domestic and international law; (2) the combination of international and domestic personnel and judges; (3) the employment of both domestic and international lawyers; and (4) formal international participation.<sup>122</sup> Although such courts typically maintain a high degree of international participation, they can help develop greater domestic capacity by engaging local staff in best practices, which may lead to greater integration with local institutions.

Tribunals with greater international participation may be easier to administer and may be further removed from potential issues burdening existing domestic legal systems, such as lack of

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<sup>118</sup> Caitlin Reiger, *Fighting Past Impunity in Bangladesh: A National Tribunal for the Crimes of 1971*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 3 (2010), *available at* <https://www.ictj.org/sites/default/files/ICTJ-BGD-NationalTribunal-Briefing-2010-English.pdf>.

<sup>119</sup> Michael A. Newton, *The Iraqi High Criminal Court: Controversy and Contributions*, INTERNATIONAL CENTER FOR THE RED CROSS, 400 (June 2006), *available at* [http://www.icrc.org/eng/assets/files/other/irrc\\_862\\_newton.pdf](http://www.icrc.org/eng/assets/files/other/irrc_862_newton.pdf).

<sup>120</sup> *Law of the Iraqi Higher Criminal Court* (Iraq, 2005), *available at* [http://law.case.edu/saddamtrial/documents/IST\\_statute\\_official\\_english.pdf](http://law.case.edu/saddamtrial/documents/IST_statute_official_english.pdf).

<sup>121</sup> Rachel Gore, *Outreach Strategy for War Crimes Division of High Court of Uganda*, PUBLIC INTERNATIONAL LAW AND POLICY GROUP & OXFORD TRANSITIONAL JUSTICE RESEARCH, 16-27, *available at* [http://www.academia.edu/1105201/Outreach\\_Strategy\\_for\\_War\\_Crimes\\_Division\\_of\\_High\\_Court\\_of\\_Uganda](http://www.academia.edu/1105201/Outreach_Strategy_for_War_Crimes_Division_of_High_Court_of_Uganda).

<sup>122</sup> Etelle R. Higonnet, *Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform*, 23 ARIZONA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 347, 356 (2006), *available at* [www.ajicl.org/AJICL2006/vol232/Higonnet%20article.pdf](http://www.ajicl.org/AJICL2006/vol232/Higonnet%20article.pdf).

funding, political pressures, or corruption.<sup>123</sup> They may be better suited to develop specialized expertise, establish more rigorous security procedures, and build public trust by setting clear expectations and achieving progress quickly.<sup>124</sup>

However, because of a greater detachment from the domestic legal entities, they may not exert much influence on the domestic system, and disparities between the tribunal and local courts may cause tension, especially in instances where there is no public consultation.<sup>125</sup> Such tribunals may also lack the trust of the population if they are perceived as being outside the established legal system.<sup>126</sup> Reform of the existing judicial system can also take place at the same time as the establishment of a domestic tribunal, regardless of the level of international participation.

An example of a hybrid court is the Special Court for Sierra Leone which was established between Sierra Leone and the UN to prosecute crimes committed during the conflict initiated by the invasion of Sierra Leone by the Revolutionary United Front through Liberia. The Court was of mixed jurisdiction and composition, with international judges appointed by the UN Secretary-General who formed the majority and a minority appointed by the Sierra Leone government.<sup>127</sup>

### International and Regional Prosecutions

International and regional prosecutions refer to mechanisms established by multiple states or regional or international organizations such as the European Union or the United Nations for prosecuting the most serious violations of international law committed during a specific era of a state's history. Except for the International Criminal Court, which is a permanent court established through multilateral agreement, regional and international courts and tribunals are usually established on ad-hoc basis with a specific mandate which sets specific limitations to their jurisdiction.

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<sup>123</sup> Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Maximizing the Legacy of Hybrid Courts, 13 (2008), available at <http://www.ohchr.org/Documents/Publications/HybridCourts.pdf>.

<sup>124</sup> Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Maximizing the Legacy of Hybrid Courts, 13 (2008).

<sup>125</sup> Mathias Holvoet & Paul de Hert, International Criminal Law as Global Law: An Assessment of the Hybrid Tribunals, 17 TILBURG LAW REVIEW 228, 231-32 (2012), available at <http://www.vub.ac.be/LSTS/pub/Dehert/413.pdf>.

<sup>126</sup> International Center for Transitional Justice, The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, 6 (2008), available at <http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>.

<sup>127</sup> Robert Cryer, Darryl Robinson and Sergey Vasiliev, An Introduction to International Criminal Law and Procedure, 176 (2019).

International and regional courts are an important alternative to domestic prosecutions especially when the government is unable or unwilling to prosecute all the crimes or perpetrators. These international courts and tribunals are usually intended not to replace domestic prosecutions but to complement domestic efforts focusing on the most responsible perpetrators of international crimes.

While international courts and tribunals have played an important role in limiting the impunity of perpetrators of serious international crimes, they have also been criticized for lack of credibility and legitimacy, biased prosecutions, lack of transparency and fairness, as well as ineffectiveness because they are perceived as distant mechanisms. Despite the criticism, overall they remain valid accountability options in a transitional justice context. This section examines the various options for regional or international prosecutions.

### International Criminal Court (ICC)

International prosecutions are often complementary to domestic prosecutions and can be initiated by newly created or existing mechanisms at the regional or international level. The ICC is the first and only permanent international criminal tribunal to prosecute genocide, crimes against humanity, and war crimes committed by citizens of a state party to the Rome Statute or in the territory of the state party.<sup>128</sup> Iran is not a state party to the ICC but may recognize its jurisdiction pursuant to art. 12 (2)(3) of the Rome Statute.<sup>129</sup> In addition, the ICC may obtain jurisdiction over the crimes committed in Iran or by Iranian nationals upon referral of the situation by the Security Council pursuant to art. 13 (b) of the Rome Statute.<sup>130</sup> The ICC may also have jurisdiction over citizens of a state party who committed crimes in Iranian territory.<sup>131</sup> However, in the specific case of Iran, it is unlikely that the Security Council will refer the situation to the ICC given that Russia, an Iranian-regime ally, is one of the five permanent members with veto power in the Security Council and is very likely to stop any resolution that aims to refer the Iranian situation to the ICC.

### International Criminal Tribunals

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<sup>128</sup> The Rome Statute of the International Criminal Court, arts. 12 (2), July 7, 1998, 2178 U.N.T.S. 90; 37 I.L.M. 2002 (1998), available at <http://untreaty.un.org/cod/icc/statute/romeofra.htm>.

<sup>129</sup> The Rome Statute of the International Criminal Court, arts. 12 (2), July 7, 1998, 2178 U.N.T.S. 90; 37 I.L.M. 2002 (1998), available at <http://untreaty.un.org/cod/icc/statute/romeofra.htm>.

<sup>130</sup> The Rome Statute of the International Criminal Court, arts. 13 (b), July 7, 1998, 2178 U.N.T.S. 90; 37 I.L.M. 2002 (1998), available at <http://untreaty.un.org/cod/icc/statute/romeofra.htm>.

<sup>131</sup> The Rome Statute of the International Criminal Court, arts. 12 (b), July 7, 1998, 2178 U.N.T.S. 90; 37 I.L.M. 2002 (1998), available at <http://untreaty.un.org/cod/icc/statute/romeofra.htm>.

Where the ICC currently has no jurisdiction over the crimes committed in Iran, there may be other accountability venues and mechanisms, such as international criminal tribunals created through the United Nations. Recently, the UN has increased its involvement in the prosecution of serious crimes through the establishment of international criminal tribunals. The UN Security Council established the International Criminal Tribunal of Yugoslavia (ICTY) in order to restore international peace and security in the region. The then Federal Republic of Yugoslavia at times refused to extradite Serbian leaders accused of war crimes, while the government of Bosnia and Herzegovina seemed either unwilling or unable to apprehend Bosnians accused of war crimes and this prompted UN involvement. Similarly, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) in 1994 to restore peace and security following the genocide. Although the government of Rwanda had begun efforts to try war crimes in domestic courts, most of the country's judges had been killed in the conflict and the judiciary faced resource limitations. In response to this judicial crisis, the Security Council adopted Resolution 955 and created the International Criminal Tribunal for Rwanda. While this has been done in the past and it is certainly one option, it is unlikely that an international criminal tribunal will be established. First, the crimes committed in Iran may fall under the jurisdiction of the ICC, provided that Iran recognizes its jurisdiction. Second, this option does not solve the problem of Russia being one of the five permanent members holding the veto power and blocking resolutions that would threaten the current Iranian regime.

### Regional Mechanisms

Regional mechanisms are often established through an agreement between a regional organization, for example the European Union (EU) and a state. For example, in 2014, Kosovo and the EU concluded an international agreement for the EU to assist in the establishment of the Kosovo Specialist Chambers and Specialist Prosecutor's Office pursuant to an exchange of letters between the President of the Republic of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy,<sup>132</sup> which was subsequently ratified by the Republic of Kosovo under its domestic law.<sup>133</sup>

The Kosovo Specialist Chambers have been operating since 2017, with jurisdiction over specified crimes against humanity, war crimes, and other crimes under Kosovo law commenced or committed in Kosovo, by persons of Kosovo/FRY citizenship or persons who committed crimes within the subject matter jurisdiction of the Specialist Chambers against persons of

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<sup>132</sup> Exchange of letters between the President of the Republic of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy (April 14, 2014).

<sup>133</sup> Kosovo Law No. 04/L-274 on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo (2014).

Kosovo/FRY citizenship wherever those crimes were committed, in the period January 1, 1998, to December 31, 2000.<sup>134</sup>

The Kosovo Specialist Chambers form part of the Kosovo judicial system,<sup>135</sup> but also have a seat in the Netherlands pursuant to an international agreement between Kosovo and the Netherlands.<sup>136</sup> The Specialist Prosecutor's Office is also seated in the Netherlands.<sup>137</sup> The Kosovo Specialist Chambers have their own statute and rules of procedure and evidence,<sup>138</sup> international judges and prosecutors and international staff.<sup>139</sup> They apply customary international law and the criminal law of Kosovo insofar as it complies with customary international law, each as applicable at the time the crimes were committed. The precedent of the Kosovo Specialist Chambers is therefore best characterized as EU assistance in the context of Kosovo's exercise of domestic criminal jurisdiction pursuant to a delegation of the relevant powers.<sup>140</sup>

### Comparative State Practice

- Iraq

During the 30 years that Saddam Hussein ruled Iraq, he oversaw the execution of thousands of political opponents, crushed dissidents and displaced more than a million Iraqis or forced them into exile abroad. Kurdish civilians were among those targeted, as well as other ethnic minorities in northern Iraq. In the south, around half a million Shiites were expelled to

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<sup>134</sup> Kosovo Law No. 05/L-053 (2015) establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office, Articles 6-9, 12-16.

<sup>135</sup> Kosovo Law No. 05/L-053 on establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office (2015), Articles 1(2), 3(1) and (6).

<sup>136</sup> Kosovo Law No. 05/L-053 on establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office (2015), Article 3(6); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands (2016), Articles 1(a), 3, 4.

<sup>137</sup> Kosovo Law No. 05/L-053 on establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office (2015), Articles 3(7); 35(11); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands (2016), Articles 1(a), 3, 4.

<sup>138</sup> Kosovo Law No. 05/L-053 on establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office (2015), Article 19; Rules of Procedure and Evidence before the Kosovo Specialist Chambers including Rules of Procedure for the Specialist Chamber of the Constitutional Court (2017, as amended 2020).

<sup>139</sup> Kosovo Law No. 05/L-053 on establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office (2015), Article 26.

<sup>140</sup> See Kosovo Law No. 04/L-274 on ratification of the international agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo (2014), Article 1(2.2); Kosovo Law No. 05/L-053 on establishing and regulating the organization, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office (2015), Article 5.



Iran. This led to a major distrust of the legal system, as well as broken individual and collective identities.

In the 1990s, Human Rights Watch and other human rights organizations tried to persuade the UN and individual governments to establish an international tribunal to prosecute Saddam Hussein and other Iraqi officials for crimes against humanity. In September 2002, US inter-agency leaders decided that if a tribunal were established it should be an Iraqi-led effort. This decision was made without consulting Iraqis or experts, and without access to or knowledge of Iraqi judicial conditions. According to the Human Rights Watch, the Iraqi judiciary lacked the capacity, experience, and independence to provide fair trials for the abuses of the past, and that the international community had to be brought on board to help in the process. Human Rights Watch called it a fundamentally flawed tribunal that lacked essential fair trial guarantees.<sup>141</sup>

The International Center for Transitional Justice conducted a study in July and August 2003 to assess the opinions and attitudes of Iraqi society with regard to justice and human rights.<sup>142</sup> The study found that there was a strong sentiment that the previous ruling leadership should face trial for their crimes and that these trials should take place in Iraq and under Iraqi control. Iraqis had a general distrust of the legal system but insisted on these trials be held domestically mainly due to anger and disappointment at the failure of the international community. Iraqis expressed confidence that uncorrupted Iraqi lawyers and judges could initiate the trials, while accepting the expertise and assistance from abroad to ensure fairness, integrity, and transparency of the trial process. There was also overwhelming support for the application of the death penalty, with reference to Islamic law. Moreover, amnesty was not looked upon favorably, but was considered possible and even necessary for those who committed lesser crimes.<sup>143</sup>

Tension between different religious and ethnic groups in Iraq, in particular between Shi'a Muslim majority and Sunni Muslim minority, led to internal conflicts and violence in the state. The rise of these tensions is a result of many factors, including the violence under Saddam Hussein and longstanding distrust among the religious communities, the de-Baathification policy and order that disbanded the Sunni-dominated military, which radicalized and exacerbated the Sunni insurgency, and a highly unstable political system, which has allowed ISIS militants and other radical groups to form and take control of parts of the state.<sup>144</sup> Throughout the transitional

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<sup>141</sup> Human Rights Watch, *Iraq: Justice Needs International Role* (Jul. 14, 2003), <https://www.hrw.org/news/2003/07/14/iraq-justice-needs-international-role>.

<sup>142</sup> Int'l Ctr. for Transitional Justice, *Iraqi Voices: Attitudes Towards Transitional Justice and Social Reconstruction* (May 2004), <https://www.ictj.org/sites/default/files/ICTJ-Iraq-Voices-Reconstruction-2004-English.pdf>.

<sup>143</sup> Int'l Ctr. for Transitional Justice, *Iraqi Voices: Attitudes Towards Transitional Justice and Social Reconstruction*, 48-51 (May 2004), <https://www.ictj.org/sites/default/files/ICTJ-Iraq-Voices-Reconstruction-2004-English.pdf>.

<sup>144</sup> Harith Hasan Al-Qarawee, *Iraq's Sectarian Crisis: A Legacy of Exclusion*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Apr. 23, 2014), <https://carnegieendowment.org/sada/55372>.

justice process in Iraq, however, religious leaders from both Shi'a and Sunni communities played a role in advocating for justice and reconciliation. For example, in 2014, Iraq's top Shi'a cleric urged lawmakers to form an effective government that enjoys broad national acceptance and that reverses past mistakes.<sup>145</sup>

In 2017, over 40 religious leaders from Iraq, representing different communities, gathered in Beirut for a three day interfaith dialogue to *inter alia* highlight the role of religious leaders in “restoring inclusive multi-religious and multi-cultural communities in Iraq after years of conflict” and to promote a shared narrative for peace and reconciliation.<sup>146</sup> One Shi'a leader said that the “dialogue strengthens trust among the religious and confessional leaders present, and enables us to interact positively” and “when we meet and strengthen dialogue among us, we promote moderation and acceptance of others as well a recognition of mistakes — and these are necessary components to build an advanced civil state in Iraq.”<sup>147</sup> Another Sunni cleric stated that “we should not deny that some of the violent acts that we have witnessed in our country have their roots in religion and religious texts. We have to accept this fact first and then affirm our role as religious leaders in finding remedies to it. Promoting positive readings of our religious texts, imposing moderate religious discourse in our sermons, training the clerics on accepting diversity and inclusivity so that they can transfer this into the people, are essential for the Iraqi society in order to restore a community where every religious and ethnic component is recognized, lives in security, and contributes to the political, social and economic life of the country.”<sup>148</sup>

Similarly, in 2021, eight prominent Iraqi Sunni and Shiite religious leaders and scholars convened for a conference to discuss a framework on the role of scholars in “combating sectarianism and religious extremism, promoting interfaith coexistence, and providing support to Iraqi government efforts to achieve a lasting peace.”<sup>149</sup>

- Libya

Muammar Gadhafi ruled over Libya as an authoritarian dictator for 42 years before the February Revolution of 2011 whereby he was overthrown, captured and killed in October 2011.

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<sup>145</sup> Shashank Bengali & Nabih Bulos, *Influential Iraqi Cleric Calls for Inclusive Government*, LA TIMES (Jun. 20, 2014), <https://www.latimes.com/world/middleeast/la-fg-iraq-sistani-20140621-story.html>.

<sup>146</sup> World Council of Churches, *Iraqi Religious Leaders Call for Restoring Religious and Social Cohesion* (Dec. 15, 2017), <https://www.oikoumene.org/news/iraqi-religious-leaders-call-for-restoring-religious-and-social-cohesion>.

<sup>147</sup> World Council of Churches, *Iraqi Religious Leaders Call for Restoring Religious and Social Cohesion* (Dec. 15, 2017), <https://www.oikoumene.org/news/iraqi-religious-leaders-call-for-restoring-religious-and-social-cohesion>.

<sup>148</sup> World Council of Churches, *Iraqi Religious Leaders Call for Restoring Religious and Social Cohesion* (Dec. 15, 2017), <https://www.oikoumene.org/news/iraqi-religious-leaders-call-for-restoring-religious-and-social-cohesion>.

<sup>149</sup> Muslim World League, *Muslim World League Convenes Sunni and Shiite leaders from Iraq in Makkah to Bridge the Divide* (Aug. 4, 2021), <https://www.prnewswire.com/ae/news-releases/muslim-world-league-convenes-sunni-and-shiite-leaders-from-iraq-in-makkah-to-bridge-the-divide-301348723.html>.

Gadhafi's tenure as Libya's head of state was characterized by factional warring, extreme violence, and indifference to human rights. Gadhafi oversaw the "Green Terror,"<sup>150</sup> a term used to describe the campaigns of violence and intimidation used against Gadhafi's opponents. This gave rise to a surveillance state, similar to those operated by Saddam Hussein in Iraq and Kim Jong II in North Korea.<sup>151</sup> These oppressive tactics fermented strong dissent to Gadhafi's rule, which eventually culminated in the 2011 February Revolution and Gadhafi's execution.

Following the 2011 February Revolution, Libya began the process of reconciling the violence of Gadhafi's rule in an effort to break the legacy of violence that had long pervaded Libyan life and bring about peace and healing. The General National Congress (GNC) was created to govern Libya through democratic rule and elections were held in 2012.<sup>152</sup> Initially, 30 women were elected as part of the first class of members of this parliament.<sup>153</sup>

The GNC passed Law No. 29 on Transitional Justice.<sup>154</sup> In that law the GNC defined transitional justice to mean "addressing the grave and systematic violations of fundamental rights and freedoms to which Libyans were subjected by the state apparatuses under Gadhafi. This shall be done through legislative, judicial, social and administrative measures in order to reveal the truth, hold perpetrators to account, reform institutions, preserve the national memory, and provide reparations and compensation for the misdeeds for which the state is responsible for providing compensation."<sup>155</sup> Aspects of transitional justice described in the law include the issuance of laws and constitutional provisions that reveal the just nature of the 17 February Revolution, the injustice of Gadhafi's rule, and the illegitimacy of unjust laws. Additional measures proscribed in Law No. 29 include disclosure of facts of a public and collective nature, disclosure of individual facts, criminal accountability, consensual reconciliation, legislative amnesty and general amnesty, reparations, and issues of displaced persons. These measures were under the purview of the newly created Fact-Finding and Reconciliation Commission (FFRM), divided into 6 departments.

Despite this foundation and potential for transitional justice based on democratic elections of the GNC, a second civil war broke out in May of 2014 after the GNC, with international support, failed to unite the state. The "legacies of the [Gadhafi] regime, in addition

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<sup>150</sup> Middle East Quarterly, *Libya and the U.S.: Qadhafi Unrepentant* (2006), <https://www.meforum.org/878/libya-and-the-us-qadhafi-unrepentant>.

<sup>151</sup> Middle East Quarterly, *Libya and the U.S.: Qadhafi Unrepentant* (2006), <https://www.meforum.org/878/libya-and-the-us-qadhafi-unrepentant>.

<sup>152</sup> Priyanka Boghani, *Regrets of a Revolution? Libya after Qaddafi*, FRONTLINE (Sep. 29, 2015), <https://www.pbs.org/wgbh/frontline/article/regrets-of-a-revolution-libya-after-qaddafi/>.

<sup>153</sup> Marine Casalis, *Encouraging Libyan women to play a greater role in politics*, RFI (Apr. 2, 2013), <https://www.rfi.fr/en/middle-east/20130204-encouraging-Libyan-women-play-greater-role-politics>.

<sup>154</sup> Law No. 29 on Transitional Justice (Libya, 2013).

<sup>155</sup> Law No. 29 on Transitional Justice (Libya, 2013).

to the violent regime change, have created new realities on the ground.”<sup>156</sup> These new realities include a fragmented state and ongoing civil war. The GNC was never able to bring stability in the post-Gadhafi era<sup>157</sup> and multiple efforts to elect new representatives to the body or efforts to replace it all failed.

In October 2020, a permanent ceasefire was signed to end the war. However, the state’s efforts to set a presidential election were delayed multiple times.<sup>158</sup> Protests continued, including when the GNC was burned down by protesters in July 2022.<sup>159</sup>

Gadhafi was executed in 2011 before he could be tried. However, the GNC did establish a court of law that prosecuted other former high-ranking officials in Gadhafi’s government in 2015. The trials were conducted in Tripoli, Libya’s capital, against more than 30 Gadhafi-era officials. They were charged with war crimes against the Libyan people during the 2011 revolution as well as other pre-revolution crimes. One of those officials charged was one of Gadhafi’s sons, Saif al-Islam,<sup>160</sup> widely considered to be the heir apparent to his father’s Libyan rule. Al-Islam was also indicted in the International Criminal Court (ICC).<sup>161</sup> Al-Islam was tried in Libya in absentia, making brief appearances via video link from his incarcerated location in the province of Zintan and was not transported to Tripoli due to the security circumstances related to ongoing uprisings in Tripoli and around Libya.

The mass trial occurred within Libya under Libyan jurisdiction and law, which brought the GNC leaders in conflict with the ICC. The ICC wanted to extradite certain individuals for trial at the Hague and wanted access to those being held prisoner while awaiting trial due to concerns over the human rights circumstances of their incarceration. Many of the defendants in the trials were not present in the courtroom and those that were in the courtroom were held in cages.<sup>162</sup> Ultimately, all of the defendants in the mass trial were convicted in 2015.<sup>163</sup> Nine of

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<sup>156</sup> Hoda Abdullahafizh Asheikh & Mehmet Direkli, *The Transitional Justice Impasse in Post-Revolution Libya: a call for a transformative approach*, Int’l Politics (2022), available at <https://doi.org/10.1057/s41311-021-00368-3>.

<sup>157</sup> Priyanka Boghani, *Regrets of a Revolution? Libya after Qaddafi*, FRONTLINE (Sep. 29, 2015), <https://www.pbs.org/wgbh/frontline/article/regrets-of-a-revolution-libya-after-qaddafi/>.

<sup>158</sup> Aljazeera, *Why Libya’s election got postponed: A quick guide* (Dec. 23, 2021), <https://www.aljazeera.com/news/2021/12/23/why-libya-election-got-postponed>.

<sup>159</sup> Robert Plummer, *Libya Protesters Storm Parliament Building in Tobruk*, BBC (Jul. 2, 2022), <https://www.bbc.co.uk/news/world-africa-62018882>.

<sup>160</sup> Tom Westcott, *Transitional Justice in Libya*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jun. 9, 2015), <https://carnegieendowment.org/sada/?fa=60344>.

<sup>161</sup> Rana Jawad, *Trial of Saif al-Islam Gaddafi will Test Libya Justice*, BBC (Nov. 23, 2011), <https://www.bbc.com/news/world-africa-15864948>.

<sup>162</sup> Tom Westcott, *Transitional Justice in Libya*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jun. 9, 2015), <https://carnegieendowment.org/sada/?fa=60344>.

<sup>163</sup> Human Rights Watch, *Libya Flawed Trial of Gaddafi Officials: Defendants Alleged Limited Access to Lawyers, Ill-treatment* (Jul. 28, 2015), <https://www.hrw.org/news/2015/07/28/libya-flawed-trial-gaddafi-officials>.

the defendants, including al-Islam, were sentenced to death in the court proceedings.<sup>164</sup> Human rights observers expressed concern over credible and persistent allegations of fair trial breaches.<sup>165</sup>

Despite the human rights concerns regarding the conditions of the defendants in these post-revolution trials, the actual existence of these trials is one of the only successful measures of addressing the crimes of Gadhafi's rule. The trials, however, did not meet international standards of basic due process because of the treatment of the defendants.<sup>166</sup>

Where these trials failed to bring justice in Libya, the International Criminal Court (ICC) made efforts to bring charges against a number of Gadhafi officials, including Saif al-Islam. The ICC began its efforts to bring charges against al-Islam starting in 2015 when the Libyan verdict was given *in absentia*, which, under Libyan law, could not be considered final.<sup>167</sup> This trial in the ICC is ongoing through the appeals process.

The swift action in Libya to prosecute those who were responsible for human suffering during Gadhafi's rule was a positive sign that the new Libyan government would be able to provide victims of those crimes resolution and justice. It also demonstrated that Libya may be able to provide a cohesive government to help Libyans out of civil war and provide a stable, pro-democracy government moving forward. However, the GNC had a tenuous hold on stability in Libya in the post-revolutionary period. As such, the legitimacy of the trials remained in question due to treatment of the defendants. There is a delicate balancing act between swift action and human rights protection to guarantee the legitimacy of the transitional process. Ultimately, these trials did not help to legitimize the GNC or the new Libyan government as there was not a coalescence of support for the government in the post-revolution and post-trial period.

The post-revolutionary government that was formed in 2011 faced immediate challenges in their efforts at reconciliation and transitional justice because of the armed uprisings that continued until the ceasefire in 2020. As such, many of the efforts of Law No. 29 were never fully implemented.

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<sup>164</sup> Chris Stephen, *Gaddafi Son Saif al-Islam 'Freed After Death Sentence Quashed'*, GUARDIAN (Jul. 7, 2016), <https://www.theguardian.com/world/2016/jul/07/gaddafi-son-saif-al-islam-freed-after-death-sentence-quashed>.

<sup>165</sup> Human Rights Watch, *Libya Flawed Trial of Gaddafi Officials: Defendants Alleged Limited Access to Lawyers, Ill-treatment* (Jul. 28, 2015), <https://www.hrw.org/news/2015/07/28/libya-flawed-trial-gaddafi-officials>.

<sup>166</sup> Tom Westcott, *Transitional Justice in Libya*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jun. 9, 2015), <https://carnegieendowment.org/sada/?fa=60344>

<sup>167</sup> Int'l Crim. Court, *Saif al-Islam Gaddafi Case: ICC Appeals Chamber Confirms Case is Admissible Before the ICC* (Mar. 9, 2020),

<https://www.icc-cpi.int/news/saif-al-islam-gaddafi-case-icc-appeals-chamber-confirms-case-admissible-icc>.

Law No. 29 and, in particular, the FFRC, was criticized as too narrow in scope and too weak in accountability because the law did not provide for the wide range of crimes possible to prosecute and account for under international law.

Additional critique for the Law No. 29 and FFRC is the failure to include women and women's rights as part of the transitional justice process.<sup>168</sup> While women took a leading role in the 2011 revolution, there have only been a few women in the various governments through elections and appointments and have been disadvantaged in the political process.<sup>169</sup> International law and standards emphasize gender-responsiveness and require that gender perspective be fully integrated in all activities concerning transitional justice. This involves both a guarantee of women's participation in the process and addressing sexual and gender-based crimes against women.<sup>170</sup> Efforts are ongoing by the few women that are presently in the Libyan government, but women continue to be challenged in their political participation, particularly in the more restrictive cultural and societal circumstances in the southern part of Libya.<sup>171</sup>

The international community has made efforts to bring Libyan stakeholders together in an effort to unify the state. Discussions between the Libyan government and various international syndicates, including the US Support Mission in Libya, Berlin I and Berlin II Conference on Libya, and Paris International Conference for Libya, continue to support efforts at reconciliation.

These reconciliation efforts have turned toward a strategy of “national reconciliation” which, “in the Libyan mindset is generally understood as turning the page and enabling forgiveness.”<sup>172</sup> Scholars suggest forgiveness must be coupled with “investigations into and

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<sup>168</sup> Int'l Comm'n Jurists, *Towards Gender-Responsive Transitional Justice in Libya: Addressing Sexual and Gender-Based Crimes Against Women* (Mar. 2022), <https://icj2.wpenginpowered.com/wp-content/uploads/2022/03/Libya-Gender-responsive-transitional-justice-process-publications-briefing-paper-2022-ENG.pdf>.

<sup>169</sup> Officials U.N. Support Mission in Libya, *Libyan Women Need Greater Awareness of their Rights, Says Group of Female Government* (Feb. 13, 2023), <https://unsmil.unmissions.org/libyan-women-need-greater-awareness-their-rights-says-group-female-government-officials>.

<sup>170</sup> Int'l Comm'n Jurists, *Towards Gender-Responsive Transitional Justice in Libya: Addressing Sexual and Gender-Based Crimes Against Women* (Mar. 2022), <https://icj2.wpenginpowered.com/wp-content/uploads/2022/03/Libya-Gender-responsive-transitional-justice-process-publications-briefing-paper-2022-ENG.pdf>.

<sup>171</sup> Officials U.N. Support Mission in Libya, *Libyan Women Need Greater Awareness of their Rights, Says Group of Female Government* (Feb. 13, 2023), <https://unsmil.unmissions.org/libyan-women-need-greater-awareness-their-rights-says-group-female-government-officials>.

<sup>172</sup> Int'l Comm'n Jurists, *Towards Gender-Responsive Transitional Justice in Libya: Addressing Sexual and Gender-Based Crimes Against Women* (Mar. 2022), <https://icj2.wpenginpowered.com/wp-content/uploads/2022/03/Libya-Gender-responsive-transitional-justice-process-publications-briefing-paper-2022-ENG.pdf>.

prosecutions of perpetrators [of] human rights violations.”<sup>173</sup> The efforts of the international community have provided support for Libya to engage in the transitional justice process, but have failed to bring about lasting peace in the state.

### Lessons Learned and Relevance for the Iranian Context

In some ways, the Iraqi pre-occupation context is similar to the Iranian context. Since the very immediate aftermath of the Iranian revolution, the Islamic Republic authorities have forcibly arrested, tortured, and executed thousands of political opponents, and severely suppressed any dissidents and protests, with the support of parts of the judicial system. Ethnic and religious minorities, which make up a large percentage of the Iranian population, are particularly targeted. Also similar to the Iraqi context, the judiciary in Iran is inseparable from the Islamic Republic and is acting under the authority of the Supreme Leader. It has been heavily criticized for lack of due process and fair trial guarantees. Looking at the shortcomings of the Iraqi domestic tribunal, therefore, a transitional justice process in Iran should highly consider establishing an international tribunal to ensure effectiveness and impartiality to advance accountability, or in each case involve international assistance in the form of investigators, prosecutors, and judges.

However, also drawing from the Iraqi experience, if the transition is influenced by foreign actors, there might still be large mistrust and disappointment among the Iranian people with the international community and foreign influences, stemming from both the Pahlavi era of the mid-20<sup>th</sup> century as well as more recent international actions or inactions in relation to Iran. Any international involvement must be mindful of acting like a top-down initiative, but instead be a transparent process which engages the Iranian civil society in different ways, giving them the ultimate agency, and enabling them to provide their expertise and knowledge.

Lastly, in the context of conflict, mistrust, and tension between religious communities, religious leaders have a key role. They may exacerbate and heighten sectarian tension, but they may also work to build bridges between communities, promote reconciliation, and build a unifying identity in Iran. The examples of Iraqi religious leaders coming together to promote a unified narrative and develop plans for reconciliation are excellent examples of how to engage interfaith discussions and restore trust and understanding between communities and should be considered as an integral part of any transitional justice process in Iran from the get-go.

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<sup>173</sup> Int’l Comm’n Jurists, *Towards Gender-Responsive Transitional Justice in Libya: Addressing Sexual and Gender-Based Crimes Against Women* (Mar. 2022), <https://icj2.wpenginepowered.com/wp-content/uploads/2022/03/Libya-Gender-responsive-transitional-justice-process-publications-briefing-paper-2022-ENG.pdf>.

Encouraging dialogue will also help religious leaders understand and accept more secular practices.

The conflict between religious communities in Iran goes back many years but is also largely exacerbated by instability and lack of political development in the state. This again highlights the importance of a focus on enabling stability through political and economic development, with meaningful political diversity and civil society participation.

As for lessons learnt from the Libya case study, it is important to keep in mind that instability across Libya has affected Libya's chances to have the adequate infrastructure to build out transitional justice efforts, even with the support and financial aid of the international community. Both a cohesive domestic government and the support of the international community can aid in the administration of transitional justice. In this context, international support without domestic stability has not been sufficient. Libya also has failed to meaningfully engage women in the process, both in building state capacity to create lasting peace as well as in transitional justice processes. When women participate in the peace process, peace is substantially more likely to last for a longer period of time.<sup>174</sup> With peace and efforts toward gender equity, Libya may build a foundation upon which a transitional justice process can be exacted.

Critically for Iran, there must be a cohesive infrastructure upon which transitional justice efforts can be mounted. A time of transition brings inherent instability, but the lesson from Libya is that international efforts are not enough to ensure domestic stability. Additionally, human rights violations committed during trials are proven to seriously undermine the efforts to lead the country to peace and stability and overall they threaten the reputation and credibility of the process. Another interesting lesson that Iran should consider when designing the accountability process is the importance of coordinating with other mechanisms that have or may have jurisdiction to ensure that proceedings are efficient.

### *Non-judicial Mechanisms*

The transitional government may want to consider non-judicial mechanisms as alternative or complementary tools to judicial mechanisms. While judicial mechanisms focus on judicial proceedings against perpetrators of crime with the main objective of passing judgements and sentencing, non-judicial mechanisms have broader objectives, in particular establishing the truth about certain events, remembering the victims and providing reparations. This section discusses

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<sup>174</sup> U.N. Women, *In focus: Women, Peace and Security* (Oct. 18, 2022), <https://www.unwomen.org/en/news-stories/in-focus/2022/10/in-focus-women-peace-and-security>.



the various non-judicial mechanisms that have been used in transitional justice contexts in addition to, or as alternatives to judicial proceedings to achieve the broader objective of justice.

### Truth-seeking, Memorialization and Reparations

Another method states have used to provide accountability is through non-judicial mechanisms. These mechanisms aim to provide states with a historical record of crimes during conflict and allow transparency or to provide victims with reparations. They are often combined with an offer of amnesty in exchange for testimony. An offer of reparations is also an effective method for reconciliation. They provide victims of crimes committed during the conflict with some form of compensation. This is often financial but can also include other methods of compensation. Non-judicial mechanisms may be resorted to as alternatives to judicial mechanisms or they may have a complementary function. In that case, it is important that any transitional government in Iran develops an accurate plan of coordination with other mechanisms, domestic, regional, or international.

### Truth and Reconciliation Commission

States have established truth and reconciliation commissions (TRCs) in order to have a record of the conflict and the crimes committed. This allows states to establish a universally acceptable history of the conflict and ensure that victims are not forgotten. They also provide a forum for affected citizens to air grievances through non-violent means and help identify actors who are eligible for amnesty and prosecution, respectively.

For instance, South Africa established the South African Truth and Reconciliation Committee to deal with the aftermath of the apartheid regime and “to provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed”<sup>175</sup> during the period of apartheid. The South African Truth and Reconciliation Committee, which lasted for seven years, consisted of three separate committees and published a final report in 1998. The three main committees were the Human Rights Violation Committee, the Reparation and Rehabilitation Committee, and the Amnesty Committee. The Human Rights Violation Committee investigated human rights abuses that took place between 1960 and 1994. The Committee held public hearings throughout South Africa and received testimony from victims of human rights abuses, later publishing transcripts of these hearings on the internet. The Reparation and Rehabilitation Committee provided victim support through the design of policies for the rehabilitation of individual victims and society as a

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<sup>175</sup> Promotion of National Unity and Reconciliation Act of 1995 *available at* <http://www.doj.gov.za/trc/legal/act9534.htm> (last visited October 5, 2006).

whole. Additionally, the Amnesty Committee considered 7,124 applications for amnesty for crimes committed between March 1, 1960, and May 11, 1994. This Committee was unique because it had the authority to provide grants of amnesty in exchange for testimony from those accused of committing human rights violations.

Another example is the Peru Truth and Reconciliation Commission. After a civil war that lasted from 1980 until 2000, Peru established a Truth and Reconciliation Commission to investigate human rights abuses committed by the military and rebel groups during the conflict. Several NGOs, civil society, and government representatives participated in drafting the Commission's mandate. As a result of their participation in this preliminary process, the Peru Truth and Reconciliation Commission benefited from significant civil society engagement which assisted the Commission in collecting testimony from victims and evidence of human rights abuses.

The structure of Peru's Truth and Reconciliation Commission was a key element to its success. The Commission opened several district offices around Peru, facilitating staff access to the rural population, who experienced the most suffering during the conflict. Commission staff also took surveys door to door to collect stories and held meetings in small villages to inform communities of the Commission's work. This private approach to investigating human rights abuses reassured those who were hesitant to testify publicly for fear of retaliation by government or rebel forces.

In total, the Commission received 17,000 testimonials and corroborated seventy percent of the cases it received, making it possible for the Commission to document over 11,500 cases of serious human rights violations. The Commission released its final report in 2003 and submitted it to the President, Chairman of the Congress, Chairman of the Supreme Court, and the Ombudsman. The report made numerous recommendations to the government of Peru, calling on the government to prosecute forty-three individuals, provide reparations to victims identified by the Commission, and implement government reforms to prevent abuses in the future.

Another example is that of the Liberian Truth and Reconciliation Commission. Liberia established a truth commission as part of their peace process. It asked Amnesty International to aid in submitting documents to establish a public record.<sup>176</sup> In doing this, they provided a public forum for the recognition of abuses. This allowed people to move forward rather than dwell on

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<sup>176</sup> Liberia: Submission to the Truth and Reconciliation Commission, available at <http://web.amnesty.org/library/Index/ENGAFR340062006?open&of=ENG-325>. Amnesty provided documents to "establish an impartial and complete account of the historical past, provide information which will contribute to the understanding of the patterns of events, the causes and consequences of violence, as well as to the investigation of human rights violations and abuses, grave breaches and other violations of international humanitarian law, that occurred..." (last visited on Oct. 5, 2006).

the past. By using an impartial, third-party group like Amnesty International for assistance, the process gained legitimacy.

Overall, state practice demonstrates that TRCs play an important role in transitional justice especially when combined with other transitional justice mechanisms. The development of a Truth Commission in Iran may allow people to feel vindication of their rights and could create trust to further cooperation and mutual reliance. The commission may also provide recommendations to prevent recurrences of such abuses. Especially where crimes are related to events for which there is insufficient clear and convincing evidence failing to meet the required threshold for prosecution, such as crimes committed in the 80s, TRCs may be valid alternatives. However, the Iranian community should be wary of the risk that the government may use TRCs to avoid prosecutions by shielding officers who were implicated in international crimes, or to manipulate public opinion for political interests. To avoid this, it is important that the community, especially CSOs, are substantially engaged, as was the case for the South African Truth and Reconciliation Committee, in the setting up of the TRC to observe that it is initiated with transparency.

### Investigative Mechanisms

Investigative mechanisms are another non-judicial mechanism. Their task focuses on the conduct of investigations into crimes in a particular area. They are often resorted to in situations where the Security Council is deadlocked over the establishment of a tribunal to prosecute crimes, or over referral to the ICC, such as in the case of the hypothetical establishment of a tribunal for Syria. These mechanisms collect witness testimonies, forensic evidence, photo and video evidence, as well as collect open source evidence to analyze whether crimes have occurred. These mechanisms later share their collected evidence with judicial mechanisms or use it for advocacy or awareness raising. Examples include the Independent Investigative Mechanism for Myanmar (IIMM) and the International, Impartial, and Independent Mechanism (IIIM) to assist investigations into the atrocity crimes committed in Syria. Both were established by the United Nations to investigate crimes committed on their territories; they are not courts and cannot prosecute individuals suspected of a crime. They were created via United Nations General Assembly resolutions as the Security Council could not agree upon the creation of criminal tribunals and other jurisdictional limitations for an ICC investigation. In this sense they were an easier option than criminal prosecutions.

### Reparations

Another important non-judicial mechanism is that of reparation. When a state commits a violation, under international law it is responsible to a) cease the wrongful conduct and b) afford adequate reparation.<sup>177</sup> The “reparation must as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>178</sup>

The UN Draft Basic Principles and Guidelines on Reparation for Victims provide for restitution, compensation, rehabilitation and satisfaction, and guarantees of non-repetition.<sup>179</sup> It also lists certain measures that constitute both guarantees of non-repetition and satisfaction to victims, including: cessation of continuing violations; apology, including public acknowledgement of the facts and acceptance of responsibility; judicial or administrative sanctions against persons responsible for the violations; and commemorations and tributes to the victims.<sup>180</sup>

For instance, Chile set up a national commission to account for the dead and disappeared in Chile. “The Chilean commission recommended that specific measures be taken to compensate

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<sup>177</sup> As established by the Permanent Court of International Justice: “It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form.” According to the Court this is not only a principle of international law, but is “even a general conception of law.” See Permanent Court of Arbitration, *Chorzow Factory Case* (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17, at 47 (September 13); International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), Merits 1986 ICJ Report, 14, 114 (June 27); *Corfu Channel Case*; (UK v. Albania); *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 184 ; *Interpretation des traites de paix conclus avec la Bulgarie la Hongrie et la Roumanie, deuxième phase, avis consultatif*, C.I.J., Recueil, 1950, p. 228. See also Article 1 of the draft Articles on state Responsibility adopted by the International Law Commission in 2001: “Every internationally wrongful act of a state entails the international responsibility of that state. (UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001” (ILC Draft Articles on State Responsibility)).

<sup>178</sup> See *Reparation: A Sourcebook for victims of torture and other violations of human rights and international law*, available at <http://www.redress.org/publications/SourceBook.pdf#search=%22reparation%22>. (last visited on Oct. 5, 2006). Other international sources that mandate reparations: the Universal Declaration of Human Rights (Art. 8), the International Covenant on Civil and Political Rights (art. 2.), the International Convention on the Elimination of All Forms of Racial Discrimination (art 6), the Convention against Torture and other Cruel Inhuman and Degrading Treatment, (art. 13) Declaration on the Protection of all Persons from Enforced Disappearance (art 19), General Assembly resolution 47/133 of 18 December 1992 (Arts. 9 and 13), the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 4 and 16), at the regional level it is important to highlight. The European Convention on Human Rights (art 13) The Charter of Fundamental Rights of the European Union (art. 47); the Inter-American Convention on Human Rights (arts 24 and 25); American Declaration of the Rights and Duties of Man (art XVIII), Inter -American Convention on Forced Disappearance of persons (art X), Inter-American Convention to Prevent and Punish Torture (Art. 8) and the African Charter of Human and Peoples’ Rights (art. 3 and 7) and the Arab Charter on Human Rights (Art. 9).

<sup>179</sup> International Council on Human Rights Policy & International Commission of Jurists, *Draft Principles and Guidelines on the right to a remedy and reparations* available at [http://www.ichrp.org/paper\\_files/120\\_w\\_06.doc](http://www.ichrp.org/paper_files/120_w_06.doc).

<sup>180</sup> See *Reparation: A Sourcebook for victims of torture and other violations of human rights and international law*, available at <http://www.redress.org/publications/SourceBook.pdf#search=%22reparation%22> (last visited on October 5, 2006)

the relatives of the victims.<sup>181</sup> As a result, the legislature enacted Law No. 19.123, published in the Official Daily on February 8, 1992. The law establishes a ‘National Corporation for Reparation and Reconciliation,’ a temporary, decentralized state organ under the Ministry of the Interior with a two-year mandate to provide compensation to victims’ families and develop programs to foster a ‘culture of respect for human rights’ in Chile.”<sup>182</sup> Reparations included monthly pensions, fixed-sum payments, health benefits, and educational benefits.<sup>183</sup> The children of victims were entitled to special educational benefits until the age of 35. The law also exempted children of victims from mandatory military service. In addition, “former President Patricio Aylwin proffered a formal apology to the victims and their families on behalf of the state, and asked the army to acknowledge its role in the violence.”<sup>184</sup>

Another example is that of Argentina. The government took similar measures to compensate victims. “Law 23.466 granted a pension equal to 75% of the minimum lifetime salary to the next-of-kin of the disappeared person. The pension could be claimed by a surviving spouse or minors under the age of 21 or who demonstrated that one or both parents were the victim of forced disappearance.”<sup>185</sup> Then-President Carlos Menem also signed a decree followed by special legislation “providing that persons who had been detained for political reasons during the period 1976-83 would be eligible for financial assistance.”<sup>186</sup> Act No. 24.043, promulgated on December 23, 1991, provided for compensation from the state, payable in six installments, to persons who were ‘placed at the disposal of the National Executive, or who, as civilians, suffered detention by virtue of acts of military tribunals’ during the state of siege, provided they had not received indemnification under a previous court order. The law was implemented under the authority of the Human Rights Office of the Ministry of the Interior. Claims had to be filed within 180 days of publication of the law, and the claimant had to waive the right to any other compensation.”<sup>187</sup>

### Amnesty, Lustration, and Vetting

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<sup>181</sup> See Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on October 5, 2006).

<sup>182</sup> Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on October 5, 2006).

<sup>183</sup> Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on October 5, 2006).

<sup>184</sup> See Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on October 5, 2006).

<sup>185</sup> See Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on October 5, 2006).

<sup>186</sup> Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on September 30, 2006).

<sup>187</sup> See Rights, Reparations, and Reconciliation, available at <http://www.csvr.org.za/papers/papedel.htm> (last visited on September 30, 2006).

In the context of transitional justice, the judicial and non-judicial mechanisms described above are often combined with other transitional justice mechanisms which aim to establish truth and reform governmental institutions, by expelling practices and individuals who have been affiliated with the regime and its politics.<sup>188</sup> These processes often include amnesty, vetting, and lustration, and play a key role in promoting reconciliation. Amnesty aims to eliminate future criminal or civil liability for the specific or identified past crimes of certain individuals conducted within a specified period of time.<sup>189</sup> States often use amnesty laws in the aftermath of armed conflict and apply them to large groups of people to promote peace and foster a sense of national unity and reconciliation in the aftermath of armed conflict.<sup>190</sup> Vetting is more focused on individual wrongdoing and it is the process of determining an individual's suitability for public service by analyzing the individual's adherence to human rights and professional standards.<sup>191</sup> Lustration generally refers to the targeting and removal of individuals for their membership in, or affiliation with, a particular group. Lustration legislation excludes former high-ranking officials, secret police officials, and collaborators from participating in a new administration, and allows for criminal proceedings against them.<sup>192</sup>

- Amnesty

Amnesty eliminates future criminal or civil liability for the specific or identified past crimes of certain individuals conducted within a specified period of time to help reintegrate them into the community and to incentivize them to come to the negotiating table, facilitating peace agreements, cease-fires, and disarmament.<sup>193</sup> Under customary international law, amnesty provisions cannot be applied to international crimes, such as genocide, war crimes, crimes against humanity, and other gross violations of human rights.<sup>194</sup>

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<sup>188</sup> Faustin Z. Ntoubandi, AMNESTY FOR CRIMES AGAINST HUMANITY UNDER INTERNATIONAL LAW 13-14 (2007).

<sup>189</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Amnesties*, 5 (2009) available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf); William Bourdon, *Amnesty*, in CRIMES OF WAR (1999), available at <http://www.crimesofwar.org/a-z-guide/amnesty/>.

<sup>190</sup> Faustin Z. Ntoubandi, AMNESTY FOR CRIMES AGAINST HUMANITY UNDER INTERNATIONAL LAW 13-14 (2007).

<sup>191</sup> Bureau for Crisis Prevention and Recovery, *Vetting Public Employees in Post-Conflict Settings: Operational Guidelines*, UNITED NATIONS DEVELOPMENT PROGRAMME 9 (2006), available at [http://www.undp.org/cpr/documents/jssr/trans\\_justice/Vetting\\_Public\\_Employees\\_in\\_Post-Conflict\\_Settings.pdf](http://www.undp.org/cpr/documents/jssr/trans_justice/Vetting_Public_Employees_in_Post-Conflict_Settings.pdf).

<sup>192</sup> Nadya Nedelsky, *Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia*, 33 THEORY AND SOCIETY 65, 65 (2004); Mark S. Ellis, *Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc*, 59 LAW AND CONTEMPORARY PROBLEMS 181 (1996).

<sup>193</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 5 (2009) available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf); William Bourdon, *Amnesty*, in CRIMES OF WAR (1999), available at <http://www.crimesofwar.org/a-z-guide/amnesty/>.

<sup>194</sup> Stef Vandeginste, *Bypassing the Prohibition of Amnesty for Human Rights Crimes Under International Law: Lessons Learned from the Burundi Peace Process*, 29 NETHERLANDS QUARTERLY OF HUMAN RIGHTS 189, 191 (2011).

States may enact amnesty laws at different points in time, for instance before the end of a conflict, or during a time of post-conflict transition.<sup>195</sup> Outgoing regimes may grant amnesty laws before the end of a conflict as a form of self-protection.<sup>196</sup> In other instances, amnesty can be a bargaining tool to encourage combatants to lay down their arms.<sup>197</sup> Transitional governments may enact amnesty laws to promote a peaceful transition and mitigate the risk of domestic unrest.<sup>198</sup>

Amnesty laws may be enacted through several methods, including an executive decree, peace agreements, constitutions and legislation, and by referendum. States may choose to use one method exclusively or several in conjunction with one another.<sup>199</sup> For instance, a state may hold a referendum on whether it should provide amnesty, and then follow the referendum with legislation implementing the amnesty.<sup>200</sup> The method used to enact an amnesty influences its perceived legitimacy.<sup>201</sup> Amnesty laws passed following consultation with elected representatives and community leaders may be perceived as more legitimate than those passed without community involvement.

There are several potential benefits and drawbacks to passing amnesty laws. The benefits of passing amnesty laws are closely related to the purpose for enacting them. In some instances, amnesty laws promote peace and reconciliation<sup>202</sup> by encouraging truth-telling.<sup>203</sup> In other instances, amnesty laws may engage parties to a conflict in the political process when the conflict is over.<sup>204</sup> Additionally, amnesty laws create an atmosphere of reintegration and

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<sup>195</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 47 (2012).

<sup>196</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 47 (2012).

<sup>197</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 47 (2012).

<sup>198</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 47 (2012).

<sup>199</sup> Louise Mallinder, Exploring the Practice of States Introducing Amnesties, CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE, 14 (June 25-27, 2007), available at [http://www.peace-justiceconference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justiceconference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

<sup>200</sup> Louise Mallinder, Exploring the Practice of States Introducing Amnesty, in BUILDING A FUTURE ON PEACE AND JUSTICE: STUDIES ON TRANSITIONAL JUSTICE, CONFLICT RESOLUTION AND DEVELOPMENT - THE NUREMBERG DECLARATION ON PEACE AND JUSTICE 127, 142 (Kai Ambos, Judith Large, and Marieke Wierda, eds., 2008).

<sup>201</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTEREST OF HUMAN RIGHTS 48 (2012).

<sup>202</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 50 (2012).

<sup>203</sup> Dan Markel, The Justice of Amnesty? Towards a Theory of Retributivism in Recovering States, 49 THE UNIVERSITY OF TORONTO LAW JOURNAL 389, 391 (1999).

<sup>204</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 52 (2012).

reconciliation that may alleviate domestic tensions.<sup>205</sup> Finally, amnesty laws save the expense of prosecuting individuals who would otherwise be criminally or civilly liable and therefore they are often resorted to alleviate the burden of prosecution on the state.<sup>206</sup>

There are also many drawbacks or risks linked with amnesty laws. Generally, states take several risks when they use amnesty as a transitional tool. Amnesty laws risk conflicting with state obligations under international law, especially when they allow for general amnesties which apply to all crimes committed during the conflict, even the most atrocious ones, which are generally exempted from amnesty. In fact, general amnesties may prevent prosecution for crimes under international law and international agreements to which a state is a party. Amnesty laws risk alienating victims, who may feel that perpetrators have not been held accountable for their actions which may result in internal tensions and individuals seeking justice outside the law.<sup>207</sup> Victims may feel that a failure to prosecute perpetrators represents state denial of justice and of the victims' suffering. In addition, passing amnesty laws may hinder the establishment of the rule of law and reintegrate criminals into the state institutions that the transitional government was expected to reform.<sup>208</sup> Finally, amnesties may send a message of impunity and fail to prevent new crimes: perpetrators may perceive the granting of amnesty as impunity for the crimes committed, increasing the likelihood that others may commit similar crimes.<sup>209</sup>

The scope of amnesty can vary greatly. Amnesty can be in the form of a blanket amnesty program where combatants who participated in or directed combat receive a grant of freedom from prosecution and punishment. Amnesty can also be in the form of a partial amnesty program where amnesty is granted for lower-level combatants and may not cover crimes against humanity or other grave human rights violations. It may also be conditional and limited in time. Often amnesty laws can specify the time period, individuals, and crimes covered by the amnesty. For instance, the Ouagadougou Political Agreement in Côte d'Ivoire in 2007 specified that the amnesty covered crimes committed between September 14, 2000, and the Agreement's date of entry into force.<sup>210</sup> Amnesty laws also specify the category of individuals to which amnesty

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<sup>205</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 52 (2012).

<sup>206</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 53 (2012).

<sup>207</sup> Daniel Pascoe, Are Truth and Reconciliation Commissions an Effective Means of Dealing with state-Organised Criminality?, 3 CROSS-SECTIONS 93, 102 (2007), available at <http://eview.anu.edu.au/crosssections/vol3/pdf/ch07.pdf>.

<sup>208</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 54 (2012).

<sup>209</sup> Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 55 (2012).

<sup>210</sup> U.N. Security Council, Ouagadougou Political Agreement, para. 6.3, U.N. Doc. S/2007/144 (Mar. 13, 2007) available at [https://peaceaccords.nd.edu/site\\_media/media/accords/Ouagadougou\\_Political\\_Agreement\\_OPA.pdf](https://peaceaccords.nd.edu/site_media/media/accords/Ouagadougou_Political_Agreement_OPA.pdf).



applies.<sup>211</sup> The scope is often dependent on the types of crimes that were committed, the capacity of the state to hold individuals accountable for those crimes, the relative power of the parties to a conflict post-transition, and the importance of post-conflict national unity. Some amnesty laws apply broadly to all participants on both sides of a conflict. Other laws specifically do not allow amnesty for high-ranking officials, the intellectual planners of repressive policies, or those in leadership positions. These limitations ensure that those who bear the most responsibility do not receive the protection of amnesty.<sup>212</sup> For instance, while the Amnesty Act in Uganda originally covered all levels of the rebel command, it was later amended to exclude the leadership level of the Lord's Resistance Army because they persisted in ordering the killing of civilians.<sup>213</sup> Other amnesties differentiate between military and civilian personnel or specify that the amnesty will cover specific groups such as rebel forces, state agents, or political exiles.<sup>214</sup>

State practice shows that, in deciding the role that amnesty shall play in the transitional justice process in Iran, the transitional government will need to determine what it wants to achieve with amnesty and determine the scope of amnesty laws accordingly. It will also need to ensure that the advantages of the process outweigh the drawbacks and that the amnesty program is complementary and compatible with other existing transitional justice mechanisms at domestic, regional, and international levels. A number of contextual factors that will help with these questions are the balance of powers between the parties to the conflict, the involvement and approval of civil society, and the resources available within the state.<sup>215</sup> The transitional government may wish to take the following key recommendations into account when deciding the personal, material and temporal scope.

### Consider the Role of Amnesty in Peaceful Transition

In the case of Iran, the transitional government may wish to consider amnesty as an effective tool to remove the current regime and associated representatives in a peaceful manner,

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<sup>211</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE, 15 (June 25-27, 2007), available at [http://www.peace-justiceconference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justiceconference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

<sup>212</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE, 3 (June 25-27, 2007), available at [http://www.peace-justiceconference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justiceconference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

<sup>213</sup> Paul Bukuluki, NEGOTIATING RETRIBUTIVE AND RESTORATIVE JUSTICE IN CONFLICT TRANSFORMATION EFFORTS: A CASE OF NORTHERN UGANDA 32 (2011); Uganda: New Amnesty Law to Exclude Top LRA Leaders, INTEGRATED REGIONAL INFORMATION NETWORKS, Dec. 16, 2003, available at <http://www.irinnews.org/report/47689/ugandanew-amnesty-law-to-exclude-top-lra-leaders>.

<sup>214</sup> Faustin Z. Ntoubandi, AMNESTY FOR CRIMES AGAINST HUMANITY UNDER INTERNATIONAL LAW 12 (2007); United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Amnesties, 7 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

<sup>215</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE, 15-16 (June 25-27, 2007), available at [http://www.peace-justiceconference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justiceconference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

and without leaving a power vacuum that may give terrorist groups additional space to thrive in the region. Without legal provisions guaranteeing the heads of state or prime ministers immunity, it is unlikely that they would leave office peacefully, thus violence and unrest would continue, threatening national and international peace and security and raising concerns about the effectiveness of the transitional government among the international community. Yemen's Law No. 1 is an example of amnesty law that successfully facilitated the removal of former President Saleh, who did leave office peacefully allowing the establishment of a new government. Law No. 1 provided amnesty for former president Saleh and also granted officials who worked under the former president in state civil, military, and security agencies, immunity from criminal prosecution in connection with politically motivated acts carried out during the course of their official duties, although it excluded acts of terrorism.<sup>216</sup> Guaranteeing former President Saleh immunity was considered necessary to prevent further violence and unrest in Yemen as President Saleh would have not willingly left office otherwise. Furthermore, neighboring countries feared that without a smooth governmental transition, a power vacuum could have been created giving terrorist groups additional space to thrive in the region.<sup>217</sup>

#### Consider Limited Amnesty to Advance Truth & Efficiency in Transitional Justice

The transitional government may wish to use amnesty to incentivize perpetrators of crimes that were committed many years before to testify, for example those crimes associated with the 1979 Islamic revolution. While it is true that these perpetrators will not be held accountable because they are subject to amnesty protection, it is also true that, even if investigated and prosecuted, the significant lapse of time may hinder the collection of sufficiently incriminating evidence to lead to a conviction. In such cases, the lack of conviction may have worse consequences on the community and especially on victims than applying amnesties that are contingent on testimony. Amnesty in such cases can ensure that victims will obtain the truth about events, contributing to the truth-seeking and memorialization dimensions of transitional justice. This also helps the transitional government focus its accountability efforts on a limited category of individuals, for example, the most responsible for the most serious crimes, and ensure a more efficient accountability process. This type of amnesties are often referred to as "limited amnesties" because they have a limited material and personal scope.

#### Ensure Amnesty Law Comply with International Norms

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<sup>216</sup> *Yemen's Immunity Law: Breach of International Obligations*, AMNESTY INTERNATIONAL, March 2012, available at <https://www.amnesty.org/download/.../mde310072012en.pdf>.

<sup>217</sup> The Guardian, United States defends immunity law for Yemeni president Saleh (Jan. 10, 2012), available at <https://www.theguardian.com/world/2012/jan/10/us-backs-yemen-immunity-for-saleh>.

It is important that amnesty laws do not violate international law norms. Amnesty laws may be in direct conflict with a state's obligations under international law when those amnesty laws prevent prosecution for crimes under international law and international agreements.<sup>218</sup> Customary international law and a number of human rights treaties require states to punish offenders of certain offenses, either in their own courts or by sending offenders to be prosecuted in another court with the authority to hear the case.<sup>219</sup> A domestic amnesty law can cause a state to violate such customary international law norms or treaties.<sup>220</sup> Additionally, some treaties that do not specifically require prosecution for certain offenses may still obligate states to provide an effective remedy for victims of human rights violations.<sup>221</sup> Effective remedies include allowing victims to hold perpetrators civilly liable, providing reparation, and allowing for other mechanisms to compensate victims.<sup>222</sup> An amnesty law barring such remedies may be in conflict with a state's obligations under those treaties.<sup>223</sup> Many amnesty laws provide protection only for specific crimes, such as those that are not serious, purely political, or economic in nature<sup>224</sup> and do not protect from international crimes such as genocide, crimes against humanity, war crimes, and other gross human rights violations.<sup>225</sup> Amnesty laws that prevent punishment for international crimes, impede victims' rights to a remedy, or obstruct the right to information about violations of human rights and humanitarian law may be inconsistent with a state's obligations under international law.<sup>226</sup> For example, in 2010, the Inter-American Court of Human Rights found that Brazil's amnesty law, which provided amnesty for individuals accused

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<sup>218</sup> Mark Freeman and Max Pensky, *The Amnesty Controversy in International Law*, in *AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY* 42, 43 (Francesca Lessa and Leigh A. Payne eds., 2012); United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 11 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

<sup>219</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 11 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

<sup>220</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 11 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

<sup>221</sup> The International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination each require state parties to provide an effective remedy for violations of human rights.

<sup>222</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 21 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

<sup>223</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 11 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf); Mark Freeman and Max Pensky, *The Amnesty Controversy in International Law*, in *AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY* 42, 48 (Francesca Lessa and Leigh A. Payne eds., 2012).

<sup>224</sup> Faustin Z. Ntoubandi, *AMNESTY FOR CRIMES AGAINST HUMANITY UNDER INTERNATIONAL LAW* 12 (2007); Louise Mallinder, *Exploring the Practice of states Introducing Amnesties*, *CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE*, 25 (June 25-27, 2007), available at [http://www.peace-justice-conference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justice-conference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

<sup>225</sup> Stef Vandeginste, *Bypassing the Prohibition of Amnesty for Human Rights Crimes Under International Law: Lessons Learned from the Burundi Peace Process*, 29 *NETHERLANDS QUARTERLY HUMAN RIGHTS* 189, 191 (2011).

<sup>226</sup> United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict states: Amnesties*, 11 (2009), available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

of committing serious human rights violations, was contrary to its obligations under the American Convention on Human Rights.<sup>227</sup>

Amnesty laws enacted by the transitional government must comply with international law. Customary international law prohibits amnesty for the most serious crimes. Furthermore, the transitional government should consider other applicable international legal frameworks that may not bar the individual, who was granted amnesty under the domestic legal system, from international prosecution. For example, if a state is a party to the ICC Statute, it will have to consider that granting amnesty for crimes that fall under the jurisdiction of the ICC will bar individuals only from domestic prosecution and not from international prosecution. In fact, based on the principle of complementarity explained above, the ICC will likely regard those situations where an amnesty law covers crimes under the ICC's jurisdiction as evidence of unwillingness or inability to prosecute triggering its jurisdiction. In such cases, the individuals will be protected from domestic prosecution but will not prevent ICC indictments or arrest warrants.<sup>228</sup> Such a situation will create uncertainty and chaos seriously undermining the credibility of the amnesty program and it will require the government to amend the laws. This happened in Uganda in 2006 when the government had to officially amend the amnesty laws which granted general amnesty following the ratification of the Rome Statute in 2004.<sup>229</sup>

Another example is that of Sierra Leone which initially offered blanket amnesty to ex-combatants, but a reinstatement of hostilities after a peace agreement caused the government to establish the Special Court of Sierra Leone, with the purpose of prosecuting perpetrators of the most severe human rights abuses. In 2004 the Appeals Chamber of the Special Court for Sierra Leone found that amnesties granted for certain international crimes by the Lomé Peace Agreement were no bar to prosecution for those crimes before the Court.<sup>230</sup>

Currently Iran is not a state party to the ICC but may recognize its jurisdiction over its nationals or crimes committed in the Iranian territory pursuant to arts. 12-13 of the Rome Statute.<sup>231</sup> Alternatively, it may establish an accountability mechanism, domestic, hybrid, or international, that prosecutes those responsible for crimes committed in Iran. If the transitional

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<sup>227</sup> Case Of Gomes Lund Et Al. ("Guerrilha do Araguaia") v. Brazil, 2010 Corte IDH Serie C, No, 219, paras. 127, 147-149 (Nov. 24), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_219\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf).

<sup>228</sup> Philipp Kastner, INTERNATIONAL CRIMINAL JUSTICE IN BELLO? THE ICC BETWEEN LAW AND POLITICS IN DARFUR AND NORTHERN UGANDA 120 (2011); Yasmin Naqvi, Amnesties and the ICC, available at <http://www.peaceandjusticeinitiative.org/implementation-resources/amnesties-and-the-icc>.

<sup>229</sup> *Amnesty (Amendment) Act*, art. 2 (Uganda, 2006), available at <http://www.ulii.org/ug/legislation/act/2015/2006>.

<sup>230</sup> Simon Meisenberg, Legality of Amnesties in International Humanitarian Law: The Lomé Decision of the Special Court for Sierra Leone, 856 INTERNATIONAL REVIEW OF THE RED CROSS 837 (2004), available at [http://www.icrc.org/eng/assets/files/other/irrc\\_856\\_meisenberg.pdf](http://www.icrc.org/eng/assets/files/other/irrc_856_meisenberg.pdf).

<sup>231</sup> The Rome Statute of the International Criminal Court, arts. 12-13, July 7, 1998, 2178 U.N.T.S. 90; 37 I.L.M. 2002 (1998), available at <http://untreaty.un.org/cod/icc/statute/romeofra.htm>.

government decides to develop an amnesty program it must ensure that what it designs does not conflict with newly created or existing accountability systems that have jurisdiction.

### Carefully Define Conditions for Granting Amnesty

The transitional government should carefully choose the language it uses to describe the scope of the amnesty laws. It is recommended that it avoids vague language that may effectively erase the intent of limited amnesties and expand their scope and transform a limited amnesty into a general amnesty that prevents prosecution for gross human rights violations and interferes with the state's international obligations. For instance, Columbia's Conditional Amnesty Law offered amnesty for ordinary crimes, but exempted from amnesty "ferocious and barbarous acts."<sup>232</sup> In practice, this vague language was interpreted to provide immunity for torturers.<sup>233</sup>

It is recommended that the transitional government carefully determines the conditions under which amnesty can be granted in light of the purposes it intends to achieve with the transition. Conditional amnesties are less likely to offend the international community because conditional amnesties require some level of acknowledgment of criminal activity, as opposed to unconditional amnesties which do not require individual accountability and serve no truth or justice function.<sup>234</sup> Similarly, victims will find conditional amnesties more acceptable as they include fact-finding processes that lead to a record of past crimes.

There may be different conditions. For instance, depending on the specific purposes the transitional government intends to achieve with amnesty, the amnesty may prescribe that the individual testify before non-prosecutorial transitional justice mechanisms like Truth and Reconciliation Commissions,<sup>235</sup> surrender arms and renounce violence, make a public apology

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<sup>232</sup> Columbia, Ley 37 de 1981, Por la Cual se Declara una Amnistía Conditional, art. 1, DIARIO OFICIAL. AÑO CXVIII. N. 35760. 14, MAYO, 1981, available at [http://juriscol.banrep.gov.co:8080/contenidos.dll/Normas/Leyes/1981/ley\\_37\\_1981](http://juriscol.banrep.gov.co:8080/contenidos.dll/Normas/Leyes/1981/ley_37_1981).

<sup>233</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE, 39, footnote78 (June 25-27, 2007), available at [http://www.peace-justiceconference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justiceconference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

<sup>234</sup> United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict states: Amnesties, 8 (2009) available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf); Vera Vriezen, AMNESTY JUSTIFIED? THE NEED FOR A CASE BY CASE APPROACH IN THE INTERESTS OF HUMAN RIGHTS 39-40 (2012).

<sup>235</sup> Since the Human Rights Violations Committee of the South African Truth and Reconciliation Commission submitted its report in October 1998, the popularity of truth commissions accompanying amnesties has greatly increased. Louise Mallinder, Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa 136 (Institute of Criminology and Criminal Justice, Queen's University Belfast, Working Paper No. 2, 2009), available at <http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Research/BeyondLegalism/filestore/Filetoupload,152146,en.pdf>.

and admit guilt,<sup>236</sup> make amends with the victims or victims' families, inform on others,<sup>237</sup> participate in traditional justice mechanisms,<sup>238</sup> or otherwise make reparation and integrate into the community. For instance, in South Africa the 1995 Promotion of National Unity and Reconciliation Act established the Committee on Amnesty and provided that amnesty would be granted to "persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act."<sup>239</sup>

Other conditions may require the application of penalties for relapsing into crime. Such penalties may include the original punishment for crimes that were under the amnesty in addition to punishment for later crimes.<sup>240</sup> Including this type of condition may help the community accept the granting of amnesty more easily as it deters the perpetrator from committing further crimes. For instance, Lebanon's 1991 conditional amnesty law granted amnesty for certain crimes in exchange for a promise from the individual not to commit future crimes covered by the amnesty. Individuals who violated the condition by committing a crime could be prosecuted for the new crime in addition to the crimes for which they were previously granted amnesty.<sup>241</sup>

Further conditions may relate to a specific time limit by which individuals must complete conditions of the amnesty to receive the benefit or avoid the penalty.<sup>242</sup> Some amnesties, often called general amnesties, apply to all crimes committed during the specified conflict.<sup>243</sup> For instance, the Liberia Comprehensive Peace Agreement granted amnesty for "all persons and

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<sup>236</sup> U.N. Transitional Administration in East Timor Regulation 2001/10, para. 27.2, U.N. Doc. UNTAET/REG/2001/10 (July 13, 2001), available at <http://www.un.org/en/peacekeeping/missions/past/etimor/untactR/Reg10e.pdf>.

<sup>237</sup> Amberin Zaman, Turkish Parliament Approves Amnesty for Kurdish Rebels, VOICE OF AMERICA NEWS, July 29, 2003, available at <http://www.voanews.com/audio/Audio/18500.html>.

<sup>238</sup> For instance, the Rwandan use of traditional Gacaca courts. Lyn S. Graybill, Pardon Punishment, and Amnesia: Three African Post-conflict Perspectives, 25 Third World Quarterly 1125 (2004), available at <http://tfasinternational.org/iipes/academics/cmghosn2011readings/july30graybill.pdf>.

<sup>239</sup> Promotion of National Unity and Reconciliation Act, No 34 art. 3(1)(b) (South Africa, 1995), available at <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

<sup>240</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, CONFERENCE ON BUILDING A FUTURE ON PEACE AND JUSTICE, 31 (June 25-27, 2007), available at [http://www.peace-justiceconference.info/download/WS4-Mallinder\\_NurembergStudy\\_070502.pdf](http://www.peace-justiceconference.info/download/WS4-Mallinder_NurembergStudy_070502.pdf).

<sup>241</sup> Loi d'amnistie generale No 84/19 art. 2 (Lebanon 1991), quoted in Louise Mallinder, AMNESTY, HUMAN RIGHTS AND POLITICAL TRANSITIONS 161 (2008).

<sup>242</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, in BUILDING A FUTURE ON PEACE AND JUSTICE: STUDIES ON TRANSITIONAL JUSTICE, PEACE AND DEVELOPMENT 127, 156 (Kai Ambos, Judith Large and Marieke Wierda eds., 2009) (noting also that in some instances, time limits have been continually extended, which has greatly weakened the incentive for compliance).

<sup>243</sup> Columbia, Ley 37 de 1981, Por la Cual se Declara una Amnistía Conditional, art. 1, DIARIO OFICIAL. AÑO CXVIII. N. 35760. 14, MAYO, 1981, available at [http://juriscol.banrep.gov.co:8080/contenidos.dll/Normas/Leyes/1981/ley\\_37\\_1981](http://juriscol.banrep.gov.co:8080/contenidos.dll/Normas/Leyes/1981/ley_37_1981).

parties engaged or involved in military activities" during the conflict.<sup>244</sup> It is recommended that the transitional government does not opt for general amnesties but for limited amnesties and determine the specific temporal scope of the amnesty.

Time limits are often integrated into longer timelines for establishing democratic rule.<sup>245</sup> For instance, the time limit in Angola was 45 days from the date the amnesty came into force while in Uganda the time limit was eight years.<sup>246</sup> The transitional government may wish to set a specific time limit in light of the longer timeline it has determined to complete the transition and establish democratic rule.

### Establish Clear & Transparent Adjudicative Systems for Amnesty Qualification

Once a transitional government decides to grant amnesty and has identified the applicable conditions, it shall address the establishment of a fact-finding or adjudicative system to determine whether an individual meets the conditions to qualify for amnesty. Successful adjudicative processes provide clear standards regarding what an individual must do to prove they have satisfied the condition.<sup>247</sup> Additionally, successful processes are transparent about the way in which the fact-finding or adjudicative mechanism makes its compliance assessment.<sup>248</sup> For instance, in South Africa, the Truth and Reconciliation Commission first determined whether or not the person seeking amnesty was alleged to have committed a crime classified as “political” based on publicly available criteria specified by the legislature.<sup>249</sup> Next, the person

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<sup>244</sup> Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties art. XXXIV (2003), available at [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/liberia\\_08182003.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf).

<sup>245</sup> Louise Mallinder, Exploring the Practice of states Introducing Amnesties, in BUILDING A FUTURE ON PEACE AND JUSTICE: STUDIES ON TRANSITIONAL JUSTICE, PEACE AND DEVELOPMENT 127, 156 (Kai Ambos, Judith Large and Marieke Wierda eds., 2009).

<sup>246</sup> Amnesty Law art. 1.2 (Angola, 2002), available at <http://www.unhcr.org/refworld/topic,4565c2252,4565c25fb,3ed89f8e4,0,,,AGO.html>; Louise Mallinder, Exploring the Practice of States Introducing Amnesties, in BUILDING A FUTURE ON PEACE AND JUSTICE: STUDIES ON TRANSITIONAL JUSTICE, PEACE AND DEVELOPMENT 127, 156, footnote. 63 (Kai Ambos, Judith Large and Marieke Wierda eds., 2009) (noting that Ugandan amnesty came into force in 2000 and was still in operation in 2008). Portions of Uganda’s law lapsed in 2012 but were reinstated for an additional two years in 2013. Rebel Amnesty Reinstated in Uganda, INTEGRATED REGIONAL INFORMATION NETWORKS, May 30, 2013, available at <http://www.irinnews.org/report/98133/rebel-amnesty-reinstated-in-uganda>.

<sup>247</sup> Louise Mallinder, AMNESTY, HUMAN RIGHTS AND POLITICAL TRANSITIONS 196 (2008).

<sup>248</sup> Louise Mallinder, AMNESTY, HUMAN RIGHTS AND POLITICAL TRANSITIONS 196 (2008).

<sup>249</sup> Louise Mallinder, Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa 65-66 (Institute of Criminology and Criminal Justice, Queen’s University Belfast, Working Paper No. 2, 2009), available at <http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Research/BeyondLegalism/filestore/Filetoupload,152146,en.pdf>.

seeking amnesty was required to submit a questionnaire providing specific information about the person's crimes, victims, and other details relevant to the Committee's decision-making process.<sup>250</sup> Decisions about whether an individual meets the conditions to qualify for amnesty can be made by the regular judiciary or by an ad-hoc commission or court dedicated specifically to deciding issues concerning amnesty. An ad hoc amnesty tribunal's authority can be centralized and operate in one location, or it can be decentralized and operate throughout the country.<sup>251</sup>

### Engage Community & Civil Society in Amnesty Decisions

It is common that the domestic population, as well as the international community, opposes amnesty programs, especially when the language of the amnesty laws is particularly vague and imprecise, transforming an initially-agreed limited amnesty into a broad one. The transitional government should foresee this opposition and act preventively to engage the community in its decisions, especially in determining the scope of the amnesty laws and the applicable conditions, and obtain some societal support so that the domestic population does not perceive the conditional amnesty as granting impunity to perpetrators. In this regard, it is recommended that the transitional government works with CSOs, especially those representing the victims, and engages them in the process of determining the amnesty laws. It is also important that the domestic community is engaged in discussions related to the establishment of complementary systems of accountability and truth-seeking to ensure that they have full understanding of the various mechanisms and processes that are initiated to address the crimes and the rationale behind the government's decisions.

### Vetting and Lustration

Vetting and lustration serve important roles in screening and excluding individuals associated with past crimes and human rights abuses so that states in transition can prevent a re-occurrence of human rights violations and ensure that public institutions are reliable and legitimate. The use of vetting and lustration rests upon the recognition that fair and efficient public institutions play a significant role in preventing future human rights abuses within a state undergoing transition.<sup>252</sup> While the terms vetting and lustration are often used interchangeably,

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<sup>250</sup> Louise Mallinder, *Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa* 67 (Institute of Criminology and Criminal Justice, Queen's University Belfast, Working Paper No. 2, 2009), available at <http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Research/BeyondL egalism/filestore/Fileupload,152146,en.pdf>.

<sup>251</sup> Home Office Border and Immigration Agency of United Kingdom, *Angola Assessment*, sec. 3.28 (Oct. 2000), available at [http://www.asylumlaw.org/docs/angola/ind00b\\_angola\\_ca.pdf](http://www.asylumlaw.org/docs/angola/ind00b_angola_ca.pdf).

<sup>252</sup> See Economic and Social Council, Commission on Human Rights, Promotion and Protection of Human Rights:



lustration generally refers to the targeting and removal of individuals for their membership in, or affiliation with, a particular group, while vetting is more focused on individual wrongdoing. Both lustration and vetting can be implemented in tandem with other transitional justice processes, such as amnesty, judicial and non-judicial mechanisms.

### Vetting

Vetting is the process of determining an individual's suitability for public service by analyzing the individual's adherence to human rights and professional standards.<sup>253</sup> Vetting seeks to exclude individuals from public office who are responsible for human rights violations or serious infractions of professional standards in order to transform and legitimize public institutions, establish civic trust, and abolish structures that allowed human rights abuses to occur.<sup>254</sup> By screening candidates and public employees based on their prior conduct, vetting aims to establish who should be excluded from public institutions, while also affording those under investigation due process safeguards.<sup>255</sup> As such, vetting can be a critical element of transitional justice as it ensures accountability while promoting democratic values and building institutions able to investigate past crimes and prevent recurrence of serious human rights abuses.<sup>256</sup> Well-designed vetting and lustration processes can help transitioning states balance the desire to exclude officials closely linked to the previous regime with the need to maintain functional government institutions.<sup>257</sup>

To conduct vetting processes, states typically establish independent and impartial commissions with specific mandates. The mandate of the commission typically sets forth the goals of the commission, the roles and responsibilities of the commissioners, and the code of

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Impunity, para. 68, U.N. Doc. E/CN.4/2005/102 (Feb. 18, 2005) (authored by Diane Orentlicher) ("Recent experience has affirmed the importance of '[v]etting the public service to screen out individuals associated with past abuses' as a guarantee of non-recurrence, while human rights treaty bodies have recognized the role of vetting in fulfilling states' general obligation to prevent violations of human rights."); Economic and Social Council, Commission on Human Rights, Promotion and Protection of Human Rights: Impunity, Principle 36, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005) (authored by Diane Orentlicher) ("States must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that ensures respect for the rule of law and protection of human rights.").

<sup>253</sup> Bureau for Crisis Prevention and Recovery, *Vetting Public Employees in Post-Conflict Settings: Operational Guidelines*, United Nations Development Programme 9 (2006), available at [http://www.undp.org/cpr/documents/jssr/trans\\_justice/Vetting\\_Public\\_Employees\\_in\\_Post-Conflict\\_Settings.pdf](http://www.undp.org/cpr/documents/jssr/trans_justice/Vetting_Public_Employees_in_Post-Conflict_Settings.pdf).

<sup>254</sup> Bureau for Crisis Prevention and Recovery, *Vetting Public Employees in Post-Conflict Settings: Operational Guidelines*, United Nations Development Programme 9 (2006).

<sup>255</sup> Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*, para. 52, delivered to the Security Council, U.N. Doc. S/2004/616 (Aug. 23, 2004).

<sup>256</sup> International Center for Transitional Justice and Kontras, *Derailed Transitional Justice in Indonesia Since the Fall of Soeharto*, 6 (Mar. 2011), available at [http://ictj.org/sites/default/files/ICTJ-Kontras-Indonesia-Derailed-Report-2011-English\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Kontras-Indonesia-Derailed-Report-2011-English_0.pdf).

<sup>257</sup> Eric A. Posner and Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 HARV. L. REV. 761, 779 (2004) available at [http://www.law.uchicago.edu/files/files/40.eap-av.transitional.both\\_.pdf](http://www.law.uchicago.edu/files/files/40.eap-av.transitional.both_.pdf).

ethics that commissioners are required to follow.<sup>258</sup> In addition, the commission mandate may reaffirm the state's desire to comply with constitutional and international norms for the vetting process.<sup>259</sup> The mandate also includes the criteria for vetting and the outcomes of the vetting process.

Criteria are often based on the needs of the position in question, the level of abuses perpetrated by the previous regimes, and the level of involvement in these abuses. States consider and develop these criteria in light of the need to maintain functional government institutions, and aim to create criteria that permit the commission to function without excluding an unnecessarily large number of individuals under consideration.<sup>260</sup> There are a number of specific criteria that commissions may take into account, such as: (1) an individual's involvement in human rights violations or other crimes, including war crimes, crimes against humanity, or genocide; (2) corruption, incompetence, or abuse of authority; (3) ties with political groups, armed groups, or ties with police or security services; and (4) the origin and value of war profit or other assets.<sup>261</sup> Additional considerations in determining criteria for vetting include personal and professional standards,<sup>262</sup> individual qualifications and skills, and an individual's ability to effectively represent the general populace.<sup>263</sup> Furthermore, commissions may consider an individual's compliance with the commission throughout the vetting process.<sup>264</sup>

Public consultations and transparency of process are crucial to the effectiveness of a vetting commission, as the ultimate goal of the commission is to build or restore public trust in government institutions. Independence and transparency may be established through clear and transparent procedures and through access to information among the public. In addition, to comply with international standards, vetting commissions are required to provide rights to individuals under review. Such protections promote submission to vetting procedures and ensure that persons subject to review may effectively defend themselves and challenge the findings of the commission.

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<sup>258</sup> United States Institute of Peace, *Transitional Justice: Information Handbook*, 14 (Sept. 2008).

<sup>259</sup> Bureau for Crisis Prevention and Recovery, *Vetting Public Employees in Post-Conflict Settings: Operational Guidelines*, United Nations Development Programme 13 (2006).

<sup>260</sup> Bureau for Crisis Prevention and Recovery, *Vetting Public Employees in Post-Conflict Settings: Operational Guidelines*, United Nations Development Programme 20 (2006).

<sup>261</sup> Serge Rumin, *Gathering and Managing Information in Vetting Processes*, in JUSTICE AS PREVENTION: VETTING PUBLIC EMPLOYEES IN TRANSITIONAL SOCIETIES 404 (Alexander Mayer-Rieckh & Pablo de Grief eds., 2007).

<sup>262</sup> Rule-of-Law Tools for Post-Conflict States – Vetting: An Operational Framework, Office of the United Nations High Commissioner for Human Rights, 20, U.N. Doc. HR/PUB/06/5 (2006).

<sup>263</sup> Bureau for Crisis Prevention and Recovery, *Vetting Public Employees in Post-Conflict Settings: Operational Guidelines*, United Nations Development Programme 20 (2006).

<sup>264</sup> Serge Rumin, *Gathering and Managing Information in Vetting Processes*, in JUSTICE AS PREVENTION: VETTING PUBLIC EMPLOYEES IN TRANSITIONAL SOCIETIES 405 (Alexander Mayer-Rieckh & Pablo de Grief eds., 2007).

## Lustration

Lustration is a transitional justice mechanism designed to examine an individual's suitability for holding certain public positions in the new administration to ensure that those who have been involved in serious crimes are excluded from official roles and are expediently prosecuted. It is often implemented in combination with other mechanisms or processes to boost the credibility of the new government by demonstrating that there is a "clean break" from the previous regime.

Lustration processes are often conducted by a commission established specifically for that purpose and involves the examination of evidence before reaching a determination. Those evidentiary processes may include interviews with the individual and/or witnesses, or requirements to submit affidavits or other documentation describing the individual's involvement with the previous regime.

Lustration has several advantages if it is implemented correctly. It can be a useful tool in promoting public trust in a new democratic administration demonstrating to the population that there is a real change in the personnel between transitioning regimes. It may also contribute to accountability efforts for abuses committed by or under a prior regime by identifying those responsible for crimes. It may also help to reduce corrupt practices in government and public institutions and provide civil service opportunities to a new generation of public employees. Finally, it is a particularly useful tool in countries emerging from periods of conflict and repression where the transitional government wants to screen and terminate the employment of individuals linked to an abusive regime,<sup>265</sup> as it happened with denazification in Germany and the more recent de-Baathification process in Iraq.<sup>266</sup>

Despite the many advantages to lustration, state practice shows that if it is not implemented correctly, lustration can give rise to multiple issues. If implemented incorrectly or without broad public support, lustration can undermine the objectives for which the process is usually devised, particularly if there are insufficient safeguards to prevent lustration being used as a political tool. In addition, a poorly devised or implemented process may (i) undermine the rule of law and due process through the dismissal of public employees, or by preventing individuals from serving as public employees, based on factors other than their individual behavior; (ii) have a destabilizing effect on a new government, particularly where the

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<sup>265</sup> Dana Michael Hollywood, *The Search for Post-Conflict Justice in Iraq: A Comparative Study of Transitional Justice Mechanisms and their Applicability to Post-Saddam Iraq*, 31 *BROOKLYN J. INT'L LAW* 59, 95 (2007).

<sup>266</sup> *LAW AND CONTEMPORARY PROBLEMS* 181 (1996). 5 Roger Duthie, Introduction, in *JUSTICE AS PREVENTION: VETTING PUBLIC EMPLOYEES IN TRANSITIONAL SOCIETIES* 18 (Alexander Mayer-Rieckh & Pablo de Grief eds., 2007).

government lacks resources and funding needed to implement an effective lustration mechanism; and/or (iii) reduce the capacity of the state to function effectively.

In conclusion, after a violent conflict, the transitional government may implement a variety of transitional justice mechanisms to help the society move forward. Such mechanisms can be implemented in isolation or they can be complementary with other processes to ensure that all the needs of the country and community affected by the conflict are fully addressed and that the country does not relapse into chaos and conflict. For example, amnesty may be a useful tool to persuade a dictator to leave the state but will not be perceived as an effective tool to bring justice to the victims. This may be remedied by combining judicial or non-judicial mechanisms that seek to establish the truth about the facts and prosecute those responsible, such courts and tribunals as well as truth and memorialization initiatives. Similarly, the country will need a system to ensure that there is a clear break from the past and that the new administration is credible and has no link with the government responsible for massive crimes. Vetting and lustration processes will serve this purpose.

### *Considerations on Justice and Accountability for a Transitional Government*

With regards to justice, accountability and human rights, a transitional government may consider strategies to address: (i) justice and accountability to prosecute the perpetrators of atrocities; (ii) human rights standards to establish an accountability framework; and (iii) creating credibility and legitimacy for the transitional justice process. In this regard, a transitional government will need to consider:

- Identifying the scope of crimes and perpetrators that will be subject to accountability frameworks by balancing the wide extent of victimization in Iran with the need for efficiency.
- Balancing the impact of the political conservative views against more democratic thinking for radical change.
- Whether amnesty should be given to certain persons to facilitate a peaceful and smooth transition of power, and if so, what the scope of such amnesty should be.
- Whether alternative or complementary accountability mechanisms should be used, such as truth-seeking and memorialization initiatives.
- Whether accountability should rely exclusively on domestic prosecutions or also recognize the jurisdiction of regional or international mechanisms (e.g., the International Criminal Court) to prosecute a certain category of crimes.
- The elements of designing a domestic prosecution mechanism, including:
  - Whether prosecutions should be done by a court or tribunal;

- The type of crimes and time period that the court or tribunal will adjudicate;
- The structure of any judicial chamber and the role of judges, victims, witnesses, and administrators;
- Whether and the extent to which international personnel and law will be incorporated into the mandate of the court or tribunal;
- The need to establish new laws or amendments, including to the existing criminal code and rules of procedure;
- Maintaining domestic and international standard regarding fair trials, right to counsel, right to confrontation, and right to appeal;
- Whether the court or tribunal shall include amnesties; and
- Whether prosecutions should be done through existing judicial domestic courts, special domestic courts, or a hybrid model.
- The elements of designing an international prosecution mechanism, including:
  - Whether and how this international mechanism may complement domestic prosecutions; and
  - Whether an existing venue (e.g., the International Criminal Court) may have jurisdiction over the relevant crimes, or whether an international criminal tribunal should be established.
- Non-judicial mechanisms to promote accountability and provide states with a historical record of crimes, including truth and reconciliation commissions, investigative mechanisms; and reparations.
- Whether and how amnesty should be provided to individuals, including:
  - Whether amnesty laws will be enacted through executive decree, peace agreements, constitution or legislation, or by referendum;
  - The substantive scope of any amnesty, for example, a blanket amnesty for combatants or a partial amnesty for lower-level combatants who did not commit crimes against humanity;
  - Whether amnesty to certain individuals (particularly high-level officials) is necessary for a peaceful transition;
  - Whether amnesty to certain individuals (particularly past perpetrators of crimes associated with the 1979 revolution) may incentivize them to testify against others;
  - How any domestic amnesty law may be designed to be in accordance with customary international law norms or treaties;
  - The temporal scope of any amnesty (e.g., for a certain conflict);
  - Whether and how conditional amnesties may be used;
  - Whether and which penalties should be imposed on any persons granted amnesty who relapse into crime;

- Whether and what time limit should be imposed on individuals to receive the benefit of amnesty;
- Providing transparency and clarity to the public and perpetrators on how amnesty shall be granted; and
- Designing amnesty mechanisms that are responsive to a domestic population's opposition to amnesty.
- Whether and how individuals will be vetted and lustration will be done to screen and exclude certain individuals from government positions, including:
  - Whether and how independent and impartial commissions may be established to vet and prevent individuals from entering into public office;
  - The criteria and basis on which individuals should be vetted, including involvement with particular crimes, ties with certain political or armed groups, or activities with certain police or security forces;
  - The outcomes of the vetting process, including certification for public service, a probationary period before entering into public service; or exclusion from public service or government positions; and
  - How lustration legislation may be drafted.
- Whether and how legislation may be introduced or amended to reflect human rights standards regarding certain punishments, such as the death penalty, torture, and conditions of imprisonment.
- Whether and which international conventions on human rights issues should be signed and implemented in Iran.
- Factors that may help promote the legitimacy and credibility of any transitional justice mechanism, including:
  - Anticipating and calculating the opposition from conservative members of the Iranian populace who may consider aspects of a transitional justice framework to be a deviation from the Islamic principles imbued within the current domestic law framework;
  - Anticipating and recognizing the role that Islam may play in increasing the credibility of a transitional justice process;
  - Considering whether and how Islamic principles (Shia and otherwise) may be incorporated into transitional justice; and
  - Considering whether and how secularism may be responsive to the concerns of the Iranian public; and
  - Developing advocacy initiatives to build a transitional justice culture in Iran, such as educational programs that explain the rationale of the accountability process and the scope of the process.

## Constitution & Public Policy

Constitutional provisions and public policy play a crucial role in achieving transitional justice in post-conflict societies. A constitution serves as a framework that sets out the basic principles of society and provides the legal basis for the establishment of institutions and procedures that can help address past abuses.<sup>267</sup> Public policy frequently builds on what is established in the constitution, facilitating the implementation of transitional justice mechanisms, providing guidance on the allocation of resources, the involvement of CSOs, and the engagement of victims and affected communities.

Countries emerging from authoritarianism frequently identify constitutional reform as a priority.<sup>268</sup> The character of post-transition states will be significantly influenced by how, when, and by whom the constitutional amendment is made. “Procedural and substantive constitutional decisions made during the earliest hours of a revolution will inform, for better or worse, the path the revolution ultimately takes”.<sup>269</sup> This can be clearly seen in Iran’s own constitutional history.

### *Iran’s Constitutional History*

The Qajar dynasty was a Persian royal dynasty that ruled from 1785 to 1925. In the late 19th century and early 20th century, the dynasty faced numerous challenges, including foreign interference in Persia's internal affairs and natural resources, corruption, incompetence, and mismanagement. In particular, a number of concessions to foreign powers sparked stark opposition and protests in Iran, including the Tobacco Concession of 1891 to 1892, which granted the British control over cultivation and sale of tobacco, and the Oil Concession in 1901, when a British millionaire socialite, William Know D’Arcy, signed a concession agreement with the Shah that gave him exclusive rights to exploit oil for 60 years in a territory that included most of the territory of Iran.<sup>270</sup>

The distress led to the emergence of a movement for a constitutional reform to limit the Shah’s power, which ultimately led to the Persian Constitution of 1906 and the establishment of a parliament and a constitutional monarchy, replacing the traditional absolute monarchical

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<sup>267</sup> Elliot Bulmer, *What is a Constitution? Principles and Concepts*, International IDEA Constitution-Building Primer 1 (2017) available at <https://www.idea.int/sites/default/files/publications/what-is-a-constitution-primer.pdf>

<sup>268</sup> Jason Gluck, *Constitutional Reform in Transitional states: Challenges and Opportunities Facing Egypt and Tunisia*, (Apr. 29, 2011) available at <https://www.usip.org/sites/default/files/resources/PB92.pdf>

<sup>269</sup> Jason Gluck, *Constitutional Reform in Transitional states: Challenges and Opportunities Facing Egypt and Tunisia*, (Apr. 29, 2011) available at <https://www.usip.org/sites/default/files/resources/PB92.pdf>

<sup>270</sup> Ariane M. Tabatabai, *No CONQUEST, NO DEFEAT: IRAN’S NATIONAL SECURITY STRATEGY* 39 (online ed., Oxford Academic 2020).

system.<sup>271</sup> In 1907, an amendment to the constitution declared Twelver Shi'ism as the state religion and established a clerical council of five *mujtahids* with the authority to invalidate enacted laws that were against the principles of Islam.<sup>272</sup>

The 1906-7 constitution established a constitutional monarchy with three independent branches of government, including an executive, legislative, and judicial branch, largely influenced by the Belgian constitution of 1831.<sup>273</sup> It established the king as the head of the executive branch,<sup>274</sup> and appointed the prime minister and ministers,<sup>275</sup> who were subject to a vote of confidence from the elected National Assembly. The legislative branch included an elected National Consultative Assembly and a partially appointed Senate. All individuals were recognized as citizens and given equal rights before the law, and freedom of expression, assembly, press, and publication was guaranteed, with the exception of materials that were harmful to the edicts of Islam.<sup>276</sup> On October 17th, 1907 the Majles (the Parliament) drafted and ratified the constitutional amendments. Further amendments to the 1906 constitution were made in 1925, 1949, and 1957.<sup>277</sup>

The Qajar dynasty's power nevertheless continued to decline, and in 1921, Reza Khan, a military officer, led a coup d'état to assume power. In 1923, he became prime minister, and in 1925, he abolished the Qajar dynasty and proclaimed himself as the Shah of Iran, establishing the Pahlavi dynasty. This marked the beginning of a process of modernization, centralization, and westernization of Iran.

The Pahlavi dynasty aimed to transform Iran into a modern industrialized state and implemented a series of reforms, including reforms in the judiciary, changes to the political and economic system, improvements to health care, developments to infrastructure and transportation, and the establishment of a national public education system with compulsory primary education for boys and girls. The reform program also aimed at implementing other

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<sup>271</sup> Ariane M. Tabatabai, NO CONQUEST, NO DEFEAT: IRAN'S NATIONAL SECURITY STRATEGY 39 (online ed., Oxford Academic 2020).

<sup>272</sup> Eric Massie & Janet Afary, *Iran's 1907 Constitution and its Sources: A Critical Comparison*, British J. Middle E. Studies, 464, 474 (2018). Interestingly, this stands in stark contrast to the current Constitution of the Islamic Republic of Iran, which in Article 4 stipulates that all "civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria." IRAN CONST. art. 4 (1979), available at <https://www.refworld.org/docid/3ae6b56710.html>.

<sup>273</sup> S. Waqar Hasib, *The Iranian Constitution: An Exercise in Contradictions*, The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization (Spring, 2004), Article 1 available at [https://ciaotest.cc.columbia.edu/olj/aln/aln\\_spring04/aln\\_spring04a.pdf](https://ciaotest.cc.columbia.edu/olj/aln/aln_spring04/aln_spring04a.pdf)

<sup>274</sup> IRANIAN CONST. art 27 (1906-7), available at <https://fis-iran.org/document/iran-1906-constitution/>

<sup>275</sup> IRANIAN CONST. art 46-49 (1906-7)

<sup>276</sup> Borbor, D. (2006). A Comparative Overview of the Iranian Constitutions of 1906-07 and 1979, *Iran and the Caucasus*, 10(2), 263-286. doi: <https://doi.org/10.1163/157338406780345943>

<sup>277</sup> CONSTITUTIONS AND CONSTITUTIONAL DEBATES, Iran Data Portal, available at <https://irandataportal.syr.edu/constitutions-and-constitutional-debates>.



changes to social and cultural life, including banning headscarves in public, adopting Western-style clothing, and promoting the Persian language.

Reza Khan's successor, his son Mohammad Reza Shah Pahlavi, also introduced a series of reforms, often referred to as the White Revolution, including major land reforms, privatization of government owned enterprises, introducing women's voting rights, and implementing a social security system. However, he also maintained an authoritarian form of government, which faced increasing opposition from various groups, including religious figures, intellectuals, and students. The opposition culminated in the 1970s, which ultimately led to the Iranian Revolution of 1979.<sup>278</sup>

In 1979, after the Iranian revolution, the country's second constitution, the current Constitution of the Islamic Republic of Iran, was adopted (amended in 1989) by a nationwide referendum to give further authority to the Velayat-e faqih (the Supreme Leader).<sup>279</sup> Pahlavi's social and economic policies had driven the country to the brink of disaster, on the eve of the Iranian Revolution, "an economic recession, inflation, urban overcrowding, government policies that hurt the bazaar classes, glaring income gaps, and conspicuous Western-style consumption by the elite and the lack of political freedom or participation were all widely felt and belied the numerous official predictions that the "Great Civilization" was just around the corner."<sup>280</sup> Pahlavi left for the United States in January 1979, and Khomeini returned to Iran from France in February to take control of the government.

What is particularly interesting about this portion of history is - prior to Khomeini's return - a draft constitution had already been proposed, which included a popularly elected Parliament, adherence to shari'a law, and a "Guardian Council" to ensure laws passed by Parliament conformed to shari'a. Khomeini initially supported this constitution but later centralized his power. He withdrew support for the Constituent Assembly and created an Assembly of Experts instead, which was much smaller and had stricter candidacy requirements. The new assembly discredited the proposed constitution and recommended a new version that consolidated more power in the hands of Khomeini and the clergy.<sup>281</sup>

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<sup>278</sup> Several factors are thought to have led to the revolution, including dissatisfaction with the land reforms, corruption, economic distress and inequalities, the repression of political dissent, the forced secularization and westernization of the society (which largely misaligned with the identity of the population in rural areas), and the Pahlavi dynasty's close ties with the West, in particular the United States.

<sup>279</sup> S. Waqar Hasib, *The Iranian Constitution: An Exercise in Contradictions*, The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization (Spring, 2004), Article 1 available at [https://ciaotest.cc.columbia.edu/olj/aln/aln\\_spring04/aln\\_spring04a.pdf](https://ciaotest.cc.columbia.edu/olj/aln/aln_spring04/aln_spring04a.pdf)

<sup>280</sup> "Modern Iran: Roots and Results of Revolution," pg. 96, supra. n. 4.

<sup>281</sup> S. Waqar Hasib, *The Iranian Constitution: An Exercise in Contradictions*, The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization (Spring 2004), Article 1 available at [https://ciaotest.cc.columbia.edu/olj/aln/aln\\_spring04/aln\\_spring04a.pdf](https://ciaotest.cc.columbia.edu/olj/aln/aln_spring04/aln_spring04a.pdf)

The constitution of the Islamic Republic of Iran is now 45 years old (amended in 1989); it consists of 15 sections, with the initial one serving as a comprehensive introduction that details the origins and objectives of the Iranian Revolution.<sup>282</sup> The remaining sections contain 145 articles that grant specific powers to the government, safeguard individual rights, and permit the government to limit those freedoms under certain circumstances.

Article 57, titled ‘Separation of Powers’, outlines the three branches of government in the Islamic Republic - the legislative, judiciary, and executive branches - while noting that all three operate under the ultimate authority of the Supreme Leader.<sup>283</sup> Critical examinations of this article reveal that despite the suggestion of separation, none of the branches truly function independently, there is evidence in the literature that Khomeini issued fatwas (religious decrees) that were “treated as legislation on issues ranging from the outlawing of warrantless searches and seizures to the establishment of domestic consumption levels for caviar, among many other topics”.<sup>284</sup> The concentration of power in the hands of the religious leader hinders the independence of these branches, making it difficult to achieve accountability and justice for victims of past abuses. Furthermore, the use of fatwas as a substitute for legislation raises concerns about the rule of law and due process, which are necessary components of any successful transitional justice process.

The Iranian Constitution includes an extensive list of individual rights<sup>285</sup> including equal protection for women, opportunities for employment, free education, housing, and the right to legal counsel. Some analysts<sup>286</sup> have interpreted these provisions to be self-contradictory. For example, the Constitution guarantees freedom of expression for the press and publications, except when it is deemed detrimental to the principles of Islam or the public's rights.<sup>287</sup> The Constitution also guarantees the freedom of association, but with limitations that do not violate the principles of Islam or the Islamic Republic.<sup>288</sup> Some individual rights directly conflict with other articles in the Constitution, such as the concept of equal rights for all people, while certain

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<sup>282</sup> [https://constituteproject.org/countries/Asia/Iran\\_Islamic\\_Rep\\_of\\_?lang=en](https://constituteproject.org/countries/Asia/Iran_Islamic_Rep_of_?lang=en)

<sup>283</sup> S. Waqar Hasib, *The Iranian Constitution: An Exercise in Contradictions* (Spring, 2004) The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization available at [https://ciaotest.cc.columbia.edu/olj/aln/aln\\_spring04/aln\\_spring04a.pdf](https://ciaotest.cc.columbia.edu/olj/aln/aln_spring04/aln_spring04a.pdf)

<sup>284</sup> *Ibid.*

<sup>285</sup> In relation to the number of rights recorded in constitutions, Iran sits around the median of the indices, although this has decreased in the past 30 years (likely a reflection on constitutions increasingly referencing fundamental rights in the modern era) [https://constituteproject.org/countries/Asia/Iran\\_Islamic\\_Rep\\_of\\_?lang=en](https://constituteproject.org/countries/Asia/Iran_Islamic_Rep_of_?lang=en)

<sup>286</sup> *Ibid.*

<sup>287</sup> IRANIAN CONST. art 24 (1979)

<sup>288</sup> S. Waqar Hasib, *The Iranian Constitution: An Exercise in Contradictions* (Spring, 2004) The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization available at [https://ciaotest.cc.columbia.edu/olj/aln/aln\\_spring04/aln\\_spring04a.pdf](https://ciaotest.cc.columbia.edu/olj/aln/aln_spring04/aln_spring04a.pdf)

religious groups are limited in their representation in the legislature.<sup>289</sup> Furthermore, the Constitution imposes limits on economic freedoms by prohibiting extravagance and wastefulness in all matters related to the economy, including consumption, investment, production, distribution, and services, which can conflict with the right to own the fruits of legitimate business and labor.<sup>290</sup>

Consequently, there is a strong argument for why the 1979 Constitution of Iran should be redrafted in the event of transition in Iran. The concentration of power in the hands of the Supreme Leader is a clear hindrance to the independence of the branches of government, making it difficult to achieve accountability and justice for victims of past abuses. The use of fatwas as a substitute for legislation raises concerns about the rule of law and due process, which are necessary components of any successful transitional justice process. Additionally, the self-contradictory nature of some provisions and the limitations placed on individual rights and economic freedoms undermine the promise of equal protection and opportunity for all. A redrafted Constitution could address these issues by clarifying the separation of powers and ensuring true independence of the branches of government and protecting individual rights without self-contradiction or limitations that impede the implementation of transitional justice measures.

### *Constitution Drafting Process: Key Factors*

The constitutional process is an opportunity in transition to create agreement on the future of a country and an operational roadmap for how that vision will be achieved. Moreover, the resulting constitution may serve as a framework for the post-conflict state and facilitate a political solution.<sup>291</sup> A durable constitution requires a participatory and deliberative process built on trust, mutual ownership, and the incorporation of diverse voices from the state.<sup>292</sup> Additionally, without adequate safety – including ceasing large-scale violence, accountability of forces, and physical security and freedom from fear of retribution for individuals – the transitional government will not be able to progress in its political development.<sup>293</sup>

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<sup>289</sup> *Ibid.*

<sup>290</sup> S. Waqar Hasib, *The Iranian Constitution: An Exercise in Contradictions* (Spring, 2004) The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization available at [https://ciaotest.cc.columbia.edu/olj/aln/aln\\_spring04/aln\\_spring04a.pdf](https://ciaotest.cc.columbia.edu/olj/aln/aln_spring04/aln_spring04a.pdf)

<sup>291</sup> Kristi Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6 CHICAGO JOURNAL OF INTERNATIONAL LAW 663, 664 (2006), available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1476&context=cjil>.

<sup>292</sup> Michele Brandt, et al., *Constitution-making and Reform: Options for the Process*, INTERPEACE, iv (2011), available at <https://www.interpeace.org/resource/constitution-making-and-reform-options-for-the-process-2/>.

<sup>293</sup> United States Institute of Peace, *Guiding Principles for Stabilization and Reconstruction*, 38-39 (2009), available at [https://www.usip.org/sites/default/files/guiding\\_principles\\_full.pdf](https://www.usip.org/sites/default/files/guiding_principles_full.pdf).

## Constitution drafting-entities or mechanisms

The entities and mechanisms involved in constitution drafting vary depending on the country's political and social context; various groups may participate, such as constitutional commissions, executive bodies, roundtables, national conferences, constituent conventions, and constituent legislatures.<sup>294</sup> In democratic contexts, the latter two, are typically the primary forums where constitutional texts are discussed, debated, and ultimately ratified through voting. For example, the US Constitution was drafted by a constitutional convention, a gathering of delegates from each of the thirteen states, in 1787;<sup>295</sup> Colombia and Ecuador also had constitutional conventions; whereas, the Constitutions of Thailand, Ireland, and Kenya were developed by a constitutional legislature.<sup>296</sup> There has been no cross-regional test of the durability of constitutions adopted by different constituent bodies. However, recent research indicates that more detailed constitutions tend to have greater longevity, leading to the possibility that legislatures may be more effective constituent bodies than special conventions when it comes to creating durable constitutions.<sup>297</sup>

## Sequencing and planning

Timing, sequencing, and planning are significant issues for constitutional reform during transition. Early planning is beneficial for identifying key priorities for a society and setting aims and ambitions for a reform agenda, generally, and when it comes to constitution drafting and transitional justice processes. Holding elections under the existing constitutional framework in Iran could lead to the same dysfunctions that enabled the former regime to stay in power (Egypt & Tunisia). Furthermore, early elections may favor parties that thrived under the former regimes, to the detriment of new oppositions.<sup>298</sup> Consequently, an extended transitional period may be necessary for comprehensive and popularly-led constitutional reform. However, longer transitions can solidify the power of transitional actors, and insisting on reform before elections could leave the process in the hands of untrusted transitional governments. Conflict between constitutional reform and elections can be resolved, at least in part, by adhering to fundamental

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<sup>294</sup> Gabriel L Negretto, *Democratic constitution-making bodies: The perils of a partisan convention*, International Journal of Constitutional Law 16:1, (Jan. 2018), 254–279, available at <https://doi.org/10.1093/icon/moy003>.

<sup>295</sup> National Constitution Project, Constitution FAQ available at <https://constitutioncenter.org/education/constitution-faqs#:~:text=The%20Constitution%20was%20written%20during,25%20to%20September%2017%2C%201787>.

<sup>296</sup> Gabriel L Negretto, *Democratic constitution-making bodies: The perils of a partisan convention*, International Journal of Constitutional Law 16:1, (Jan. 2018), 254–279, available at <https://doi.org/10.1093/icon/moy003>

<sup>297</sup> Christopher W. Hammons, *Was James Madison Wrong? Rethinking the American Preference for Short, Framework-Oriented Constitutions* 93(4) AM. POL. SCI. REV. 837 (1999)

<sup>298</sup> Jason Gluck, *Constitutional Reform in Transitional States: Challenges and Opportunities Facing Egypt and Tunisia*, (Apr. 29, 2011) available at <https://www.usip.org/sites/default/files/resources/PB92.pdf>

principles that legitimize the constitution-making process, such as inclusivity, participation, transparency, consensus, and national ownership.

In several instances of practice, states have commenced a reform process by holding a nationwide conference, or similar, to set the aims and objectives of a national reform process (Yemen and The Gambia). These processes can also sometimes identify whether an interim constitution, permanent constitution, or constitutional amendments will be required (The Gambia). Early planning is beneficial for identifying key priorities for a society and setting aims and ambitions for a reform agenda, generally, and when it comes to constitution drafting and transitional justice processes.

In contexts of political volatility, creating a concrete plan or roadmap for constitution-drafting and transitional justice processes is not always possible, however, where feasible, having a clear plan can be beneficial in managing stakeholder expectations and ensuring progress is not unnecessarily delayed (Yemen and The Gambia). It is crucial to consider Iran's laws, including any interim constitution, and create a realistic plan.

### Communication and Coordination

States may provide for constitution drafting and transitional justice commissions, tasked with respectively leading these processes (The Gambia, Sudan, and Yemen). In some cases (Bosnia Herzegovina and Nepal) the lack of coordination between the two processes makes it challenging to ensure that the constitution and transitional justice processes are aligned and responsible for mutually reinforcing outputs. On the other hand, coordination, even if informal, has been beneficial in creating synergies and guiding transitional justice principles (Yemen and South Africa). Coordination and synergies between the constitution-drafting and transitional justice processes should be promoted by establishing processes for coordination between commissions and mandating coordination in foundational legal documents.

### Transparency and Inclusivity

One of the primary aims of constitution-drafting and transitional justice processes is to contribute to peace and to ensure that past injustices are corrected. If constitution-drafting and transitional justice processes are to lead to durable peace, it is necessary to ensure openness and transparency within the processes and to take account of the views of all stakeholders. In certain case studies, where a process was not inclusive, inter-communal tensions continued and the process failed to address the wrongs of the past adequately (Bosnia Herzegovina and Egypt). There are a variety of options for creating an open, transparent, and inclusive process. These

may include creating working groups for particular sections of society (Yemen) or engaging in extensive outreach throughout the process (The Gambia).

### International Intervention in Constitution Drafting

The international community can provide support and assistance in constitution-drafting and transitional justice processes. At the same time, examples such as Bosnia Herzegovina have shown that it is often important to avoid a constitution and transitional justice process being led entirely by the international community and/or being entirely top-down. Constitution-drafting and transitional justice processes need to account for the unique cultural and societal aspects of Iranian society and Iran's history. Moreover, while international support may be forthcoming immediately following a political transition, long-term sustainability requires local ownership, leadership, and expertise.

### Civil Society and Victim Participation

If civil society and victim participation in constitution-drafting and transitional justice processes is to be meaningful, it is essential that civil society and victims groups have sufficient capacity to engage in processes. In practice, this may mean holding workshops with select communities or groups prior to a constitution-drafting and transitional justice process commencing in order to raise understanding as to what constitution drafting and transitional justice are and to solicit views of affected communities. It may also mean working with these groups to ensure that they are able to seek input from their constituencies and engage in effective outreach. The full range of victim interests and grievances are considered in the constitution-drafting and transitional justice processes, and that core issues are not missed (The Gambia).

### Building Consensus and Outreach

When an interim constitution is in place and a transition involves both constitution drafting and transitional justice, it is advantageous to have conversations or consultations about transitional justice early and with all sectors of society. This can help build knowledge and understanding of key concepts and options, and achieve broad consensus (Sudan). Outreach workshops, information materials, and programs with civil society and victims can facilitate this process. It is crucial not to exclude key conflict actors from these processes, as their views may cause disruptions if left unaccounted for.

A transitional government in Iran should consider commencing constitution drafting and transitional justice processes by holding an inclusive nationwide conference, or similar, to determine the aims and ambitions of a reform agenda and to ensure that there are synergies and links in the aims of both the constitution-drafting and transitional justice processes. This should also take into account whether to draft and promulgate an interim constitution, permanent constitution, or simply to make constitutional amendments at the outset.

### Legal Considerations

Constitution-drafting and transitional justice processes are often national processes and states have discretion as to what to include in a constitution or how to shape transitional justice. There are, however, certain international standards that are often beneficial to include in a constitution or take account of when designing transitional justice mechanisms. For example, many constitutions include fundamental rights based on international human rights obligations. Moreover, to be effective, any transitional justice process (especially accountability or truth and justice mechanisms) must ensure that victim rights are protected, and provide perpetrators with fair trial rights.

When drafting a new constitution, it may be useful to include provisions on transitional justice processes and mechanisms to ensure their implementation. While entrenching rules in the highest law of a state can increase compliance, it may also reduce flexibility and require early addressing of difficult transitional justice issues. Therefore, an optimal approach is to include minimum guarantees or commitments to transitional justice while leaving room for change and adaptation.

### Funding Considerations

A transition government should also ensure that there is adequate funding for a constitution-drafting and transitional justice process. Consider mandated commitments from a government and other sources of funding that may be able to help fund the constitution-drafting and transitional justice processes.

### *Transitional Justice Constitution Provisions*

The inclusion of provisions for transitional justice in the constitution can help to promote accountability, reconciliation, and the prevention of future violations of human rights. It is recommended that the transitional government include minimum guarantees or commitments to

transitional justice in constitution provisions to give legal force to transitional justice while leaving room for change and adaptation.

### Criminal Justice Reform Provisions

Criminal justice reform provisions aim to reform the criminal justice system to ensure that it is fair, efficient, and effective. These provisions can be included in the constitution drafting process to ensure that individuals are held accountable for crimes they have committed and that justice is served. Colombia's 2016 peace agreement included provisions for reparation programming; a special Jurisdiction for Peace, which aimed to hold those responsible for human rights violations during the country's armed conflict accountable; and contained guarantees of non-repetition, through the establishment of a Truth Commission.<sup>299</sup>

### Amnesty Provision

Amnesty provisions provide immunity to individuals who may have committed crimes during a conflict or political crisis. Including amnesty provisions in the constitution drafting process can help promote reconciliation and create an environment that supports peaceful coexistence. 186 UN member states mention amnesty and/or pardon in their constitution, 105 reference both.<sup>300</sup> Of the six countries which do not refer to amnesty in their constitution, Andorra is the only state which has not passed amnesty. South Africa's post-apartheid constitution included provisions for a Truth and Reconciliation Commission, which granted broad amnesties for participation in the truth process.<sup>301</sup>

### Provisions for Truth Processes

Truth commission provisions may outline the responsibilities of or establish a commission that is tasked with investigating human rights abuses or crimes committed during a conflict or political crisis. When established, truth commissions provide an opportunity for victims to tell their stories and seek justice for the harm they have suffered. In the Democratic Republic of the Congo, a truth commission was established within the framework of the

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<sup>299</sup> The Office of the High Commissioner for Peace, Colombia's Peace Agreement *available at* <https://www.ila-americanbranch.org/wp-content/uploads/2022/10/The-Columbian-Peace-Agreement.pdf>

<sup>300</sup> Josepha Close, *Amnesty Provisions in the Constitutions of the World: A Comparative Analysis*, International Law blog (Jan. 5, 2015) *available at* <https://internationallaw.blog/2015/01/05/amnesty-provisions-in-the-constitutions-of-the-world-a-comparative-analysis/>

<sup>301</sup> SOUTH AFRICA CONST. (1996)



Comprehensive Peace Agreement (2002), Articles 154-160 of the transitional constitution assigned the commission the responsibility of uncovering the truth from conflicting accounts of history, and promoting peace, reparation, and reconciliation.<sup>302</sup> Including truth commission provisions in the constitution drafting process can help promote accountability and prevent future human rights violations.

### Institutional Reform Provisions

Institutional reform provisions aim to reform institutions such as the police, judiciary, and security forces, to ensure that they are independent and impartial. These provisions can be included in the constitution drafting process to prevent abuse of power and ensure that institutions serve the interests of the people. The constitutions of Tunisia and Egypt include institutional reform provisions in their post-revolutionary constitutions to address abuse of power and corruption.<sup>303</sup> This would be particularly relevant in a transitional Iran.

### Right to justice, non-recurrence, right to know, and right to reparations provisions

These provisions ensure that victims of human rights violations or crimes committed during a conflict or political crisis have the right to justice, the right to know the truth about what happened, and the right to reparations for the harm they have suffered. Including these provisions in the constitution drafting process can help prevent the recurrence of human rights violations and promote reconciliation.

Reparation provisions aim to provide compensation to victims of human rights violations or crimes committed during a conflict or political crisis. These provisions can be included in the constitution drafting process to ensure that victims receive reparations for the harm they have suffered. Reparations can take various forms, including financial compensation, rehabilitation, or other forms of support. Colombia has one of the largest reparation schemes, established through a mix of judicial and transitional justice measures.<sup>304</sup> It is the Colombian Constitution that provides for administrative liability in cases where a government entity causes harm to a person who is not legally obliged to bear such harm.<sup>305</sup>

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<sup>302</sup> United States Institute of Peace, *Truth Commission: Democratic Republic of Congo report*

(Jul. 1, 2003) available at <https://www.usip.org/publications/2003/07/truth-commission-democratic-republic-congo>

<sup>303</sup> EGYPT CONST. (2014) available at [https://www.constituteproject.org/constitution/Egypt\\_2014.pdf](https://www.constituteproject.org/constitution/Egypt_2014.pdf); TUNISIA CONST.

<sup>304</sup> Nelson Camilo Sanchez and Adriana Rudling, Colombia Reparations Policy Report: Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict (2019) available at <https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf>

<sup>305</sup> COLOMBIA CONST. art 90 (1991)

## *Considerations on Constitution and Public Policy for a Transition Government*

With regards to constitution and public policy, a transition government may consider strategies to develop the constitution to be in line with their policy objectives. This may include broader questions regarding whether and how constitutional reform should be done, including:

- Iran's past history of constitutional reforms and previous proposals of draft constitutions.
- The existing constitutional separation of powers (between the legislative, judiciary, and executive branches) and the actual separation of these powers in current Iranian society.
- Whether the transitional government's approach to Islam or secularism is sufficiently reflected in the existing constitution.
- Whether existing constitutional rights and protections are sufficient, or whether their scope and limitations should be revised, especially in light of any transitional justice efforts.
- Considering minimum guarantees or commitments to give legal force to transitional justice.
- The forum in which the constitution should be drafted, such as a constitutional commission, executive body, round table, national conferences, constituent convention, or constituent legislature.
- Establishing adequate funding for a constitution-drafting and transitional justice process. This may include considering mandated commitments from governments or other funding bodies.
- Whether and how the international community may support the domestic constitution-drafting process.
- The timing, sequencing, and planning of constitutional reform. This includes considerations of:
  - Whether the constitutional reform should occur prior to or after elections;
  - What length of transition period is necessary for comprehensive and popularly-led constitutional reform; and
  - Whether an interim constitution may help to allow for a more stable reform process prior to a permanent constitution.
- Communication and coordination between constitution-drafting and transitional justice processes. This may include considerations of:
  - Reforms to criminal justice provisions to increase fairness, efficiencies, and effectiveness;
  - Drafting amnesty provisions to facilitate a peaceful transition;

- Drafting provisions that provide for the establishment of a truth commission process;
- Drafting provisions that address broader institutional reforms, including to military and security forces; and
- Drafting provisions regarding human rights such as the right to justice, non-recurrence, the right to knowledge/information, and right to reparations.
- Creating transparency in the constitution-drafting process to create durable peace by accounting for the views of all stakeholders.
- Identifying key priorities for any potential constitution drafting at an early stage.
- Building up the capacity of civil societies and victims to participate in constitution-drafting and facilitate the transitional justice process in the constitution.
- Conducting public consultations to build consensus and conduct outreach.

## Government, Judiciary & Administration

The constitution of the Islamic Republic of Iran, adopted in December 1979, recognizes Shia Islam as the state religion. The idea of "guardianship of the jurist" was first proposed by former Supreme Leader Ruhollah Khomeini as a means to establish a fair government that weaves Islamic law into its fabric. Following the 1979 Islamic Revolution, Iran underwent a constitutional referendum to reorganize its government. Consequently, a political system that blended theocratic and democratic aspects emerged. The democratic elements consist of a one-chamber legislature known as the Majlis, a president-led executive branch, and an autonomous judiciary. A clerical system supervises these democratic institutions to guarantee adherence to Islamic law.<sup>306</sup> As mentioned throughout the sections of this roadmap, the Supreme Leader wields considerable power and control over Iran's key political, military, and religious entities. The Iranian government consists of a combination of elected and unelected bodies, with the Supreme Leader taking a pivotal role in determining the nation's overall trajectory. While elected representatives and various government branches handle numerous daily decisions, the Supreme Leader's endorsement or direction is frequently sought for significant matters or policy decisions.

The human rights violations in Iran are a result of multiple factors, but are abetted by the governance of Iran. A cycle of authoritarianism drags across the structure of the regime, where the Supreme Leader's ideological governance has created a culture of impunity, undermining the key elements of transparency and accountability and leading to conformity and suppression of various types of speech that do not align with the principles of the regime. Additionally, the broad agendas and mandates of these agencies result in a situation in which their operations can easily exceed legal boundaries. Lack of accountability, combined with the agencies' extensive powers and resources, allows them to conduct surveillance, detain, torture, and execute individuals without a precise legal justification that aligns with international human rights principles. Furthermore, the prevalence of corruption within the security sector<sup>307</sup> compounds the issue, making it difficult for victims to seek justice and hold perpetrators accountable. As a result, human rights violations in Iran remain a persistent problem, and addressing these issues will require significant reforms within the government and security apparatus.

### *Structure of Iran's Governmental, Judicial, and Administrative Leadership*

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<sup>306</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), available at <https://www.cfr.org/article/islamic-republics-power-centers>

<sup>307</sup> Behnam Gholipour, *Official Report: Iran's Military is Riddled with Corruption*, IRANWIRE, (Jun. 4, 2021), available at <https://iranwire.com/en/features/69671/>

A transition government will need to consider the existing structure of Iran's leadership and the different individuals and entities that supervise and maintain oversight over Iran's government and administration. This section details the key leadership figures, noting the consistent presence of oversight and/or control by the Supreme Leader. These key figures include:

- **The Supreme Leader:** Over the last four decades, the supreme leader (also known as the “guardian jurist”) has consistently held the highest authority. As outlined in Iran's constitution, the supreme leader acts as the head of state and possesses extensive powers, derived from the belief that religious authority gives rise to political authority. Article 110 of Iran's constitution specifies the principal responsibilities of this role, encompassing the establishment and supervision of national policies, command over the armed forces, and the appointment of military commanders and the leaders of the Islamic Revolutionary Guard Corps and police.<sup>308</sup> Ali Khamenei, who followed Khomeini, has been reportedly involved in choosing ministers for defense, intelligence, foreign affairs, and science—an important role that includes appointing the heads of universities.<sup>309</sup>
- **Assembly of Experts:** The Assembly of Experts is a body of 88 Islamic scholars, who are elected for eight-year terms through a popular vote. The primary responsibility of the Assembly of Experts is to appoint, supervise, and, if necessary, dismiss the Supreme Leader of Iran. In this capacity, the assembly ensures that the Supreme Leader adheres to Islamic principles and properly fulfills his responsibilities as the country's highest-ranking political and religious authority. In addition to their duties related to the Supreme Leader, the Assembly of Experts can also provide counsel on matters of national importance and propose amendments to the Iranian constitution.

Although the Assembly of Experts in Iran possesses the constitutional authority to appoint, supervise, and dismiss the Supreme Leader, several factors make this process challenging in practice. The Supreme Leader's considerable control over key institutions such as the military, judiciary, and media, coupled with their status as the highest-ranking political and religious authority, make it difficult for the assembly to challenge their authority without risking a loss of

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<sup>308</sup> Article 110 of Iran (Islamic Republic of)'s Constitution of 1979 with Amendments through 1989, *available at* [https://www.constituteproject.org/constitution/Iran\\_1989.pdf](https://www.constituteproject.org/constitution/Iran_1989.pdf)

<sup>309</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), *available at* <https://www.cfr.org/article/islamic-republics-power-centers> *see also* Britannica, *Iran: Government and Society*, *available at* <https://www.britannica.com/place/Iran/Government-and-society>

legitimacy. Additionally, the assembly's internal dynamics, with 88 Islamic scholars holding diverse opinions and allegiances, complicate reaching a consensus on such a critical issue. Furthermore, concerns over potential political and social instability resulting from the removal of the Supreme Leader, as well as the limited historical precedent, contribute to the assembly's reluctance to exercise its power.

- **The President:** The President is the second-highest authority in Iran following the Supreme Leader who serves as the head of the government. The president is elected by the people every four years. The president is merely responsible for managing day-to-day governmental affairs, such as economic policy and foreign relations. The president is responsible for implementing the country's laws and establishing policies within the framework set by the Supreme Leader.<sup>310</sup>
- **The Majlis:** The Iranian Parliament, also known as the Majlis is a deliberative body composed of 290 seats with members elected for four-year terms by geographical districts. It has five seats allocated to religious minorities. Over time, the number of clerics in Parliament has declined, with 16 elected in 2016 as opposed to 27 in 2012, while the number of members affiliated with the Revolutionary Guards has increased. As a unicameral legislative body, the Majlis hold significant lawmaking authority, responsible for creating and passing legislation, ratifying international treaties, and approving the national budget. However, the Guardian Council, a body responsible for assessing the constitutionality and compliance with Islamic principles of laws passed by the Parliament, reviews its actions. The Majlis operate by harmonizing its legislative duties with the substantial influence wielded by the Supreme Leader and the Guardian Council. This dynamic interplay among various branches of government ensures the distribution of power and alignment of the overall political structure with the principles of the Islamic Republic.<sup>311</sup>
- **The Guardian Council:** The Guardian Council consists of 12 members, six of whom are theologians appointed by the Supreme Leader, and the remaining six are legal scholars chosen by the Parliament. This council serves a critical function in upholding checks and balances within the Iranian government by

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<sup>310</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), available at <https://www.cfr.org/article/islamic-republics-power-centers> see also Britannica, *Iran: Government and Society*, available at <https://www.britannica.com/place/Iran/Government-and-society>

<sup>311</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), available at <https://www.cfr.org/article/islamic-republics-power-centers> see also Britannica, *Iran: Government and Society*, available at <https://www.britannica.com/place/Iran/Government-and-society>

scrutinizing the constitutionality and adherence to Islamic tenets of legislation enacted by the Majlis. Moreover, the Guardian Council possesses considerable authority in defining the contours of Iranian electoral democracy, as it is tasked with assessing and approving candidates for the Assembly of Experts, presidency, and Parliament. This pivotal role enables the Guardian Council to exert significant influence over the political landscape and the spectrum of candidates eligible to partake in Iran's democratic process.<sup>312</sup>

- **The Expediency Council:** The Expediency Council in Iran is a key advisory body that serves to resolve disputes and a mediator between the Majlis and the Guardian Council. The primary function of the Expediency Council is to act as an arbiter in cases where the Guardian Council has rejected legislation passed by the Parliament due to inconsistencies with the constitution or Islamic principles. In these situations, the Expediency Council reviews the legislation and makes the final decision on whether the law should be approved or not, considering both the national interest and the Islamic principles. The Expediency Council is appointed by the Supreme Leader for five-year terms, and has been delegated authority to supervise the government. This institution provides an additional means for the Supreme Leader to assert a more direct influence over the government's functioning.<sup>313</sup>
- **The Supreme National Security Council:** The Supreme National Security Council is a decision-making body in Iran that is responsible for formulating and coordinating national security policies, defense strategies, and foreign policy. The council was established to ensure collaboration between various branches of the government, military, and intelligence agencies to address significant security issues and safeguard Iran's national interests. The Supreme National Security Council is chaired by the President of Iran and includes key members of the Iranian government, such as the heads of legislative, executive, and judicial branches, along with ministers of foreign affairs, defense, and intelligence. Similar to the critical bodies of the Iranian government, the Supreme Leader also plays a vital role in the Supreme National Security Council, as they appoint two

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<sup>312</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), available at <https://www.cfr.org/article/islamic-republics-power-centers> see also Britannica, *Iran: Government and Society*, available at <https://www.britannica.com/place/Iran/Government-and-society>

<sup>313</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), available at <https://www.cfr.org/article/islamic-republics-power-centers>

representatives to the council and have the authority to approve major decisions related to defense and foreign policy.<sup>314</sup>

- **The Judiciary:** The judiciary branch, headed by the Chief Justice, who is appointed by the Supreme Leader for a five-year term, is responsible for interpreting and enforcing laws. The judiciary comprises various types of courts such as civil and criminal courts, religious courts, and military courts, with the Supreme Court being the highest court.<sup>315</sup> The Islamic courts also operate alongside the regular court system to enforce Islamic law. However, the judiciary has been criticized for lacking independence from the government and being influenced by political considerations. The Head of the Judiciary is appointed by the Supreme Leader and is responsible for appointing the heads of general and specific courts.<sup>316</sup> This has resulted in protests against the unfair treatment of political dissidents and human rights activists by the judiciary.<sup>317</sup>
- **The Provincial and Local Governments:** Iran is divided into 31 provinces, each with its own governor-general who oversees administration and policy implementation within the province. These provinces are further divided into counties, districts, and townships. The Minister of the Interior is responsible for appointing governors-general for provinces and governors for counties. Each administrative level has a council, and the Supreme Council of Provinces is made up of representatives from the provincial councils. Mayors are elected by city councils, while city council members are elected locally. Village administration is supervised by a village master who receives guidance from elders.<sup>318</sup>

### *Division of Powers and Branches of Iran's Government*

The division of powers between the different branches of government is not clearly delineated or separated between the different governmental and administrative actors. Rather, as the ultimate authority in the country, the Supreme Leader has vast powers, including control over the judiciary, the military, and the media, including via the Guardian Council. The Supreme

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<sup>314</sup> Council on Foreign Relations, *The Islamic Republic's Power Centers*, (Sept. 23, 2022), available at <https://www.cfr.org/article/islamic-republics-power-centers>

<sup>315</sup> This list of courts is not exclusive, there are other judicial and non-judicial dispute settlement bodies, this is just a list of some of the most important judicial bodies.

<sup>316</sup> IRANIAN CONST. art 156-174 (1979)

<sup>317</sup> Britannica, *Iran: Government and Society*, available at <https://www.britannica.com/place/Iran/Government-and-society>

<sup>318</sup> Britannica, *Iran: Government and Society*, available at <https://www.britannica.com/place/Iran/Government-and-society>



Leader can effectively engineer election results and management of the judiciary through appointment processes. This concentration of power has made it difficult for citizens to hold the government accountable for its actions and has limited the ability of elected officials and other institutions to challenge the Supreme Leader's decisions. Additionally, the Supreme Leader's role as the final authority on religious and political matters has contributed to the marginalization of those who do not adhere to the government's interpretation of Islam. This has created a sense of alienation and disenfranchisement among some segments of the population.

### *Strategies for Decentralization and Separation of Powers*

To address these issues, a transitional government may wish to consider a more decentralized system of governance that promotes transparency, accountability, and the participation of citizens in decision-making processes.

Decentralization involves the transfer of political, administrative, and fiscal authority from the central government to local units. In the late 1990s and throughout the 2000s, a number of states proceeded in the decentralization of central authority to local governments.<sup>319</sup> Behind this trend is the notion that local, politically accountable government entities can develop tailored economic and public policies which can more effectively serve the needs of local communities, including the poor and politically marginalized minorities and ethnic groups.<sup>320</sup>

In states that bring together a number of individuals with varied ethnic backgrounds, decentralization can promote commitment to the government by these various ethnic groups. A well-tailored decentralization plan that includes elements of administrative and fiscal decentralization in addition to political decentralization coupled with specific considerations applicable to multi-ethnic communities can build a foundation for enhanced cooperation among ethnic groups.

During the decentralization process, one or more tiers of local government may take on the political, administrative, and/or fiscal responsibilities for their region, locality or community.<sup>321</sup> Each of these are described briefly below and discussed in further detail within this section.

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<sup>319</sup> John Mary-Kuazyia, *Political Decentralization in Africa: Experiences of Uganda, Rwanda, and South Africa*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, 3 (Dec. 2007), available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan028411.pdf>.

<sup>320</sup> Craig Johnson, *Decentralisation in India: Politics, Poverty, and Paychayati Raj*, OVERSEAS DEVELOPMENT INSTITUTE, 1 (Feb. 2003), available at <http://www.odi.org.uk/resources/download/1767.pdf>.

<sup>321</sup> Joseph Siegle & Patrick O'Mahony, *Assessing the Merits of Decentralization as a Conflict Mitigation Strategy*, USAID, 2-3 (Oct. 2006).

- **Political decentralization** is a top-down process, where central governments delegate governing responsibilities to sub-state governments and empower the people of those entities to directly elect the governing officials—which serves to reduce the central government’s control over the social, economic, and cultural life of its citizens.<sup>322</sup> Political decentralization aims to give citizens and their elected representatives more power in public decision-making.<sup>323</sup>
- **Administrative decentralization** is the transfer of responsibility for planning, financing, and management of public services from the central government and its agencies to the administrative agencies of local governments.<sup>324</sup>
- **Fiscal decentralization** covers the financial aspects of decentralization, which provides sub-state entities with spending responsibilities, revenue generating authority, and a defined amount of discretion to manage their local fiscal policies.<sup>325</sup>

States commonly prioritize different dimensions of decentralization, depending on the political context.<sup>326</sup> For instance, the government in Cambodia prioritized political decentralization in 2002 over the administrative and fiscal dimensions of decentralization.<sup>327</sup> Meanwhile, the Bolivian authorities in the mid-1990s focused on political and fiscal decentralization.<sup>328</sup> Some states, such as Uganda, accord the same importance to political, administrative, and fiscal decentralization in recognition that simultaneous and multifaceted decentralization is generally the most effective.<sup>329</sup> However, when the local governments floundered in providing services and demonstrated fiscal irresponsibility, the central government intervened; thus, undermining the integrity of the decentralization process.

To transition Iran from its current condition to one that is aligned with international legal norms and standards, the transitional government may also consider institutional reform to address the legacies of massive human rights violations that have occurred in the country. The structure of government in democratic states generally relies on the principle of separate powers and a system of checks and balances to ensure that each government branch functions properly

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<sup>322</sup> USAID, *Democratic Decentralization Programming Handbook*, 4 (June 2009).

<sup>323</sup> Craig Johnson, *Decentralisation in India: Politics, Poverty, and Paychayati Raj*, OVERSEAS DEVELOPMENT INSTITUTE, 4 (Feb. 2003).

<sup>324</sup> Craig Johnson, *Decentralisation in India: Politics, Poverty, and Paychayati Raj*, OVERSEAS DEVELOPMENT INSTITUTE, 4 (Feb. 2003).

<sup>325</sup> USAID, *Democratic Decentralization Programming Handbook*, 4 (June 2009).

<sup>326</sup> USAID, *Democratic Decentralization Programming Handbook*, 4 (June 2009).

<sup>327</sup> USAID, *Democratic Decentralization Programming Handbook*, 4 (June 2009).

<sup>328</sup> USAID, *Democratic Decentralization Programming Handbook*, 4 (June 2009).

<sup>329</sup> USAID, *Democratic Decentralization Programming Handbook*, 4 (June 2009).

and does not exceed its powers. Allowing the executive, legislative, and judicial branches to retain independence is an important aspect of the separation of powers principle. At the same time, effective democratic states seek to make each branch of government accountable to the other branches as well as to the public, as a check or limit on its power. With regard to the judiciary, states use a variety of mechanisms to achieve independence and accountability. Among other things, these include institutional structuring, laws and regulations, administrative and financial oversight, and public awareness.

### *Balancing Accountability and Independence*

Independence and accountability are sometimes perceived as opposing objectives. Judicial independence means that the judiciary as a whole is insulated from undue interference by the legislative or executive branches in its administration of justice.<sup>330</sup> Further, independence implies that judges resolve disputes by applying the law based on the facts of the cases, without regard for pressure or influence from the government or other external sources.<sup>331</sup> Judicial accountability refers to mechanisms for holding the judiciary responsible for its administration of justice. Accountability usually encompasses a requirement that the judiciary respond to inquiries by other institutions or branches of government concerning the manner in which the judiciary operates.<sup>332</sup>

At first glance, therefore, a judiciary that is both free from interference and subject to oversight by other institutions may seem contradictory.<sup>333</sup> However, judicial independence and accountability can in fact complement and reinforce one another. For one thing, judicial independence—a fundamental requirement of democratic legal systems—is widely considered not to be absolute, but subject to some measure of limitation.<sup>334</sup> Furthermore, states have at their disposal numerous mechanisms to encourage accountability while preventing unnecessary

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<sup>330</sup> David Pimentel, *Reframing the Independence v. Accountability Debate: Defining Judicial Structure in Light of Judges' Courage and Integrity*, 57 CLEVELAND STATE LAW REVIEW 1, 5 (2009); Muna B. Ndulo & Roger Duthie, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, *The Role of Judicial Reform in Development and Transitional Justice* (2009), reprinted in TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS (2009), available at <http://www.ictj.org/en/research/projects/research5/thematic-studies/2806.html>.

<sup>331</sup> J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence From What and Why?*, NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW, Vol. 58, 241, 245-46 (2001-2003).

<sup>332</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 4 (2008).

<sup>333</sup> David Pimentel, *Reframing the Independence v. Accountability Debate: Defining Judicial Structure in Light of Judges' Courage and Integrity*, CLEVELAND STATE LAW REVIEW, Vol. 57, 1, 18 (2009).

<sup>334</sup> David Pimentel, *Reframing the Independence v. Accountability Debate: Defining Judicial Structure in Light of Judges' Courage and Integrity*, CLEVELAND STATE LAW REVIEW, Vol. 57, 1, 5 (2009); see also General Assembly Resolution 217A (III), U.N. Doc. A/810 (December 10, 1948) (art. 10 of the Universal Declaration of Human Rights guarantees the right to a trial by an “independent and impartial tribunal”).

interference with the work of the judges.<sup>335</sup> For instance, the state can hold judiciaries accountable by implementing measures to increase transparency, in order to diminish judicial corruption.<sup>336</sup> The state can also implement measures to enhance efficiency, as increased access to justice is in itself a powerful form of accountability.<sup>337</sup> Lastly, cooperation from other branches of government and the creation of an independent authority, such as a judicial council, allows for simultaneous accountability and independence.<sup>338</sup>

A successful judiciary is one that provides for the effective adjudication of disputes, and whose adjudication is respected by the people and by the other branches of government—so as to promote the rule of law.<sup>339</sup> Understood in this sense, the success of a judiciary relies considerably on how the public perceives the judiciary.<sup>340</sup> Indeed, if the public perceives the judiciary as one that is free from outside influence but is not efficiently administering justice, or more generally does not comply with the law and principles of the state, then individuals will resolve their disputes by other means.<sup>341</sup> Similarly, if the public perceives the judiciary as guided more by outside influences than by compliance with the laws and principles of the state, then individuals will hesitate to seek out judicial resolution of their disputes. Accordingly, states looking to establish a stable and successful judiciary typically strive for both independence and accountability.

### *Tools for Creating an Accountable and Independent Judiciary*

Democratic states have a variety of tools available to establish a judiciary that is free from political interference, but that is accountable for the methods and manner in which it administers justice. Some mechanisms contribute more toward accountability, but nonetheless support specific aspects of independence as well. Conversely, other mechanisms chiefly promote independence while simultaneously helping to ensure its accountability. The most common tools for creating a stable and effective judiciary are employed as part of (1) Judicial Appointment

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<sup>335</sup> Heike Gramckow, *International Trends – Strengthening Judicial Independence and Accountability*, in FUTURE TRENDS IN STATE COURTS 112 (National Center for State Courts, 2005), available at [http://www.ncsconline.org/D\\_KIS/Trends/Trends05MainPage.html](http://www.ncsconline.org/D_KIS/Trends/Trends05MainPage.html).

<sup>336</sup> Wim Voermans, *Judicial Transparency Furthering Public Accountability for New Judiciaries*, 3 UTRECHT LAW REVIEW 148, 149 (2007).

<sup>337</sup> Wim Voermans, *Judicial Transparency Furthering Public Accountability for New Judiciaries*, 3 UTRECHT LAW REVIEW 148, 149 (2007).

<sup>338</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 3 (2008).

<sup>339</sup> J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence From What and Why?*, NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW, Vol. 58, 241, 246 (2001-2003).

<sup>340</sup> J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence From What and Why?*, NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW, Vol. 58, 241, 246 (2001-2003).

<sup>341</sup> J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence From What and Why?*, NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW, Vol. 58, 241, 246 (2001-2003).

Process; (2) Judicial Removal Process and Judgeship Tenure; (3) Legislative Oversight; (4) Disciplinary and Complaint Processes; (5) Management and Governance of the Judiciary; (6) Financial Autonomy and Transparency; (7) Reform of the Court System; and (8) Public Education, Awareness, and Access.

## Judicial Appointment Process

The judicial appointment process—the method by which persons obtain the position of judge—can directly affect the independence of the judiciary. Generally, judges are selected either by election or by political appointment, both of which have implications for independence. For instance, some elected judges may employ self-interested political or personal considerations while administering justice in order to gain reelection.<sup>342</sup> On the other hand, politically-appointed judges may be more subject to political pressure from other branches or political parties.<sup>343</sup> With regard to accountability, appointing judges by election makes the judiciary directly accountable to the electorate. Further, judicial appointment mechanisms that use transparent procedures and objective selection criteria can increase the degree of judicial accountability.<sup>344</sup> Each of these approaches is explained further below:

- **Appointment by an Independent Judicial Council:** Many states have established some form of judicial council that participates in the appointment process either by advising the selection of judges or appointing them directly. The judicial council is generally separate from the judiciary and other branches of government, but often accountable in some manner to at least one of the branches.<sup>345</sup> In Turkey, for instance, the Supreme Council of Judges and Public Prosecutors, an independent government institution, is responsible for appointing candidates to the courts following an examination and training process.<sup>346</sup> However, the Minister of Justice oversees this process by recruiting candidates for

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<sup>342</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 3 (2008).

<sup>343</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 3 (2008).

<sup>344</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 10 (June 2009), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/Reducing\\_Corruption\\_Judiciary\\_June09.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/Reducing_Corruption_Judiciary_June09.pdf).

<sup>345</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 5 (2008).

<sup>346</sup> Consultative Council of European Judges, *Questionnaire on the Independence of Judges, Their Appointment and Careers, and Funding of the Courts: Reply Submitted by Turkey* (2001), available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1055653&Site=COE>.

trainings and sitting as a member of the Council.<sup>347</sup> Thus, Turkey's executive branch has considerable influence over the appointment of judges.

The independent judicial councils of other states have a more direct role in appointing judges. In the United Kingdom, for instance, the Judicial Appointments Commission selects candidates and refers them to the Lord Chancellor for appointment.<sup>348</sup> The Lord Chancellor may reject the selection, request reconsideration of the selection, or submit the selection to the Prime Minister, who in turn is required to recommend the selection for appointment.<sup>349</sup> Therefore, the Judicial Appointments Commission has a direct role in appointing judges; however, the institution remains accountable to the Judicial Appointments and Conduct Ombudsman as well as to the Parliament.<sup>350</sup> By contrast, in Argentina, the Magistrate Council appoints judges directly, rather than merely recommending candidates.<sup>351</sup> In this way, an independent judicial council can help shield the judiciary from political influence while preserving its accountability to other branches of government.<sup>352</sup>

- **Transparent and Merit-Based Appointment Procedures:** A state's appointment process can also promote both judicial accountability and independence when officials employ a transparent, merit-based method of selection.<sup>353</sup> In Turkey, candidates applying to the courts are required to attend a competitive training program.<sup>354</sup> Candidates are chosen to participate in the training program based on

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<sup>347</sup> Consultative Council of European Judges, *Questionnaire on the Independence of Judges, Their Appointment and Careers, and Funding of the Courts: Reply Submitted by Turkey* (2001).

<sup>348</sup> Constitutional Reform Act 2005 (U.K.) arts. 27, 70, 75B, 79, 88, available at <http://www.legislation.gov.uk/ukpga/2005/4/contents>.

<sup>349</sup> Constitutional Reform Act 2005 (G.B) arts. 26(3), 96; Judicial Appointments Commission, *Role and Remit*, available at <http://www.judicialappointments.gov.uk/about-jac/155.htm>.

<sup>350</sup> Constitutional Reform Act 2005 (U.K.) Schedules 12-13, <http://www.legislation.gov.uk/ukpga/2005/4/contents>. Judicial Appointments and Conduct Ombudsman, available at <http://www.judicialombudsman.gov.uk/>; Department of Constitutional Affairs, *Judicial Appointments Commission Framework Document*, 15-16, available at [http://www.judicialappointments.gov.uk/static/documents/JAC\\_Framework\\_Document.pdf](http://www.judicialappointments.gov.uk/static/documents/JAC_Framework_Document.pdf).

<sup>351</sup> Law 24.937, art. 12-13 (Argentina, 1997), available at <http://www.infoleg.gov.ar/infolegInternet/anexos/45000-49999/48231/norma.htm>.

<sup>352</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS No. 250, 3 (2008).

<sup>353</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 9 (June 2009), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/Reducing\\_Corruption\\_Judiciary\\_June09.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/Reducing_Corruption_Judiciary_June09.pdf).

<sup>354</sup> Consultative Council of European Judges, *Questionnaire on the Independence of Judges, Their Appointment and Careers, and Funding of the Courts: Reply Submitted by Turkey* (2001), available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1055653&Site=COE>.

qualifying examination scores and their marks from a Turkish law school.<sup>355</sup> The High Judicial and Prosecutorial Council in post-conflict Bosnia and Herzegovina has a selection criteria composed of objective requirements, such as legal education, bar examination scores, and practical training.<sup>356</sup> The use of transparent procedures and objective selection criteria promote the appointment of competent individuals, and are a form of public accountability. A judicial appointment process including these elements also promotes independence by removing political considerations from the process.

Although there is no consensus on which type of appointment system best balances judicial accountability and independence, some characteristics clearly help to promote both. Giving two or more branches of government a role in the process of appointing judges or creating an independent judicial governing institution to oversee the appointment process, are among the most successful means of encouraging both accountability and independence.<sup>357</sup> Additionally, providing for a transparent and merit-based selection process can help limit the personal preferences or undue influence of politicians on the process, and better ensure that individuals are appointed based on qualifications and competency, rather than cronyism.<sup>358</sup>

### Judicial Removal Process and Judgeship Tenure

The judicial removal processes and the tenure of judgeships impact both the accountability and the independence of the judiciary. Selecting the proper length of judgeship tenure while also utilizing a clear process to remove a judge from the bench for misconduct or incompetency will allow a state to balance both accountability and independence. States employ diverse removal processes to maintain this type of judicial accountability and many effectively use transparent and politically neutral processes.<sup>359</sup> At the same time, most states strictly limit the grounds for removal to preserve judicial independence.<sup>360</sup>

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<sup>355</sup> Consultative Council of European Judges, *Questionnaire on the Independence of Judges, Their Appointment and Careers, and Funding of the Courts: Reply Submitted by Turkey* (2001).

<sup>356</sup> *Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina* art. 20-21 (Bosnia and Herzegovina 2002).

<sup>357</sup> International Commission of Jurists, *Practitioners' Guide No. 1, Independence of Judges, Lawyers, and Prosecutors*, 42-43 (2004), available at <http://www.mafhoum.com/press7/230S24.pdf>.

<sup>358</sup> Rebecca Bill Chavez, *The Appointment and Removal Process for Judges in Argentina: The Role of Judicial Councils and Impeachment Juries in Promoting Judicial Independence*, LATIN AMERICAN POLITICS & SOCIETY (Jun. 22, 2007).

<sup>359</sup> Heike Gramckow, *International Trends – Strengthening Judicial Independence and Accountability*, in FUTURE TRENDS IN STATE COURTS 112 (National Center for State Courts, 2005), available at [http://www.ncsconline.org/D\\_KIS/Trends/Trends05MainPage.html](http://www.ncsconline.org/D_KIS/Trends/Trends05MainPage.html).

<sup>360</sup> International Commission of Jurists, *Practitioners' Guide No. 1, Independence of Judges, Lawyers, and Prosecutors*, 54 (2004), available at <http://www.mafhoum.com/press7/230S24.pdf>.

Some states have more than one branch of government participating in the judicial removal process in order to ensure greater accountability. In Sweden, the Chancellor of Justice or the Parliamentary Ombudsman may initiate criminal or noncriminal proceedings against a judge of the Supreme Court or the Supreme Administrative Court.<sup>361</sup> The dual-branch nature of the Swedish removal process promotes accountability because if one branch opts not to prosecute a judge for misconduct, another branch may still initiate proceedings.<sup>362</sup> In the German cooperative system, on the other hand, the legislature and the high court work together. The Federal Parliament requests the Federal Constitutional Court to commence impeachment proceedings, which result in the Federal Constitutional Court deciding to acquit, transfer, retire, or dismiss the judge under scrutiny.<sup>363</sup> While giving the power to the legislature to request impeachment proceedings helps provide for accountability, the cooperation between the legislature and the judiciary to actually initiate the proceedings helps preserve the independence of the judiciary.<sup>364</sup>

Providing for sufficiently lengthy judgeship tenure may facilitate judicial independence by shielding judges from undue political interference.<sup>365</sup> Most states rely on life tenure for judges, while some have adopted tenure limits in order to encourage an efficient judiciary.<sup>366</sup> In the Republic of the Philippines, for instance, the Constitution guarantees life tenure for judges.<sup>367</sup> This further secures judicial independence because the legislature needs to use the extensive process of amending the Constitution if it wishes to modify the length of judges' tenure.<sup>368</sup> The Constitution limits life tenure, however, by a requirement of "good behavior" and a mandatory retirement age of 70, which preserves the accountability of the judiciary by ensuring that judges are capable to serve.<sup>369</sup>

Life tenure might also be coupled with clear removal procedures in order to avoid the potential for unaccountable misconduct by judges. Transparent removal procedures involving several branches of government serve to limit politicized removals while still maintaining accountability to a political branch.<sup>370</sup> A transparent judicial removal process generally allows

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<sup>361</sup> SWEDEN CONST. ch 12 art. 6 (1974).

<sup>362</sup> Ministry of Justice, *The Swedish Judicial System*, 22 available at <http://www.sweden.gov.se/content/1/c6/01/62/79/023155e4.pdf>.

<sup>363</sup> GERMANY CONST. art. 98(2) (1949), available at [http://www.bundestag.de/htdocs\\_e/documents/legal/index.html](http://www.bundestag.de/htdocs_e/documents/legal/index.html).

<sup>364</sup> GERMANY CONST. art. 98(2) (1949).

<sup>365</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 10 (June 2009).

<sup>366</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 10 (June 2009).

<sup>367</sup> REPUBLIC OF THE PHILIPPINES CONST. art. VIII section 11 (1987), available at <http://www.ldb.org/philcon/preamb.htm>.

<sup>368</sup> REPUBLIC OF THE PHILIPPINES CONST. art. VIII section 11 (1987).

<sup>369</sup> REPUBLIC OF THE PHILIPPINES CONST. art. VIII section 11 (1987).

<sup>370</sup> Heike Gramckow, *International Trends – Strengthening Judicial Independence and Accountability*, in FUTURE TRENDS IN STATE COURTS 112 (National Center for State Courts, 2005), available at [http://www.ncsconline.org/D\\_KIS/Trends/Trends05MainPage.html](http://www.ncsconline.org/D_KIS/Trends/Trends05MainPage.html).



for removal due to misconduct, but only on strictly defined and limited grounds, and subject to public oversight.<sup>371</sup> For instance, in addition to a mandatory retirement age, the Swedish Constitution permits the removal of a judge only if the judge has shown to be unfit to hold office through a criminal act or gross neglect of his duties.<sup>372</sup>

### Legislative Oversight

Democratic governments generally embrace the principle of separation of powers, while providing ways in which each branch may balance and check the powers of the others.<sup>373</sup> Accordingly, there are several ways in which the legislature may serve as a powerful check on the judiciary, and thereby promote its accountability. The legislature may (1) designate appointment and removal processes, (2) mandate reporting obligations, and (3) promulgate judicial rules through legislation.<sup>374</sup> However, states with effective judiciaries often include safeguards in these processes in order to help prevent undue political influence and protect judicial independence.

- **Appointment and Removal of Judges by the Legislature:** One simple check a legislature may have on a judiciary is legislative participation in the appointment and removal process of judges. For instance, in Germany, the Federal Parliament elects the judges of the Federal Constitutional Court.<sup>375</sup> Moreover, the legislature may appoint a parliamentary ombudsman, who can oversee the functioning of the courts.<sup>376</sup> In many states, citizens can also directly contact the ombudsman, providing the public with a means to assess the efficiency of the courts, to complain, and to recommend improvements.<sup>377</sup> For instance, in Sweden, the Parliament appoints a Parliamentary Ombudsman who has power to initiate legal proceedings against judges; thus, the Parliament plays an indirect role in the judicial removal process.<sup>378</sup>

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<sup>371</sup> International Commission of Jurists, *Practitioners' Guide No. 1, Independence of Judges, Lawyers, and Prosecutors*, 54 (2004).

<sup>372</sup> SWEDEN CONST. ch 11 art. 5 (1974).

<sup>373</sup> Montesquieu Institute, *Charles Montesquieu*, available at <http://www.montesquieu-institute.eu/9353000/1/j9vvhfxcd6p0lcl/vhisjvf5mwvq>.

<sup>374</sup> Agora, *Parliamentary Function of Parliament*, available at <http://www.agora-parl.org/node/1053>.

<sup>375</sup> Kay Hailbronner and Marcel Kau, *Constitutional Law*, in Introduction to German Law 53, 72 (Mathias Reimann and Joachim Zekoll, eds., 2005).

<sup>376</sup> European Parliament, Working Paper, *European Ombudsman and National Ombudsman or Similar Bodies – Comparative Tables* (March 2001).

<sup>377</sup> European Parliament, Working Paper, *European Ombudsman and National Ombudsman or Similar Bodies – Comparative Tables*, 8 (March 2001).

<sup>378</sup> The Parliamentary Ombudsman, *General Information*, available at [http://www.jo.se/Page.aspx?MenuId=12&ObjectClass=DynamX\\_Documents&Language=en](http://www.jo.se/Page.aspx?MenuId=12&ObjectClass=DynamX_Documents&Language=en).

While providing for a legislative role, states often adopt certain safeguards to help mitigate the political influence that is often inherent in a legislature's appointment and removal of judges. In Germany, for instance, the law requires more than a simple majority to appoint judges. One house of the Federal Parliament indirectly elects half of the members of the Federal Constitutional Court, by supermajority<sup>379</sup>, while the other house directly elects the remaining members of the Court by two-thirds majority.<sup>380</sup> Requiring the participation of both houses of the legislature, as well as requiring a vote by supermajority, generally entails compromise between political parties and a buffer against any one political interest driving the election.<sup>381</sup>

- **Legislative Oversight:** Legislatures may also exercise significant oversight over the judiciary by mandating reporting obligations, which promote transparency and accountability without compromising independence.<sup>382</sup> In the United Kingdom, considerable efforts towards judicial accountability inspired officials to require that the Judicial Appointments Commission report to the British Parliament at the end of each fiscal year on its functions and performance.<sup>383</sup> Similarly, the Bosnia and Herzegovina Council reports annually to the legislature on its activities and on its recommendations for improvements, allowing the legislature to design reforms to improve the quality of justice.<sup>384</sup>
- **Limited Use of Supplementary Legislation:** Legislatures may also contribute to enhancing judicial transparency and accountability through specifically tailored legislation, but constitutional provisions often limit the subject matter of the legislation in order to prevent legislative abuse. For instance, the legislature may adopt legislation to establish rules that directly affect the judiciary's composition, such as the number of judges or courts, or their structure and functions. Legislatures also often have the constitutional power to create and dissolve courts.<sup>385</sup> In the United Kingdom, the Parliament created a Supreme Court in 2005, in order to institutionalize separation of

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<sup>379</sup> Supermajority refers to a voting requirement that exceeds a simple majority (more than 50%) to make certain decisions or appointments.

<sup>380</sup> *Federal Constitutional Court Act* arts. 5-7 (Germany, 1951), available at <http://www.iuscomp.org/gla/statutes/BVerfGG.htm>.

<sup>381</sup> *Federal Constitutional Court Act* arts. 5-7 (Germany, 1951).

<sup>382</sup> Agora, *Parliamentary Function of Parliament*, available at <http://www.agora-parl.org/node/1053>.

<sup>383</sup> Constitutional Reform Act 2005 (U.K.) Schedule 12, art. 32, available at <http://www.legislation.gov.uk/ukpga/2005/4/schedule/12>; Department of Constitutional Affairs, *Judicial Appointments Commission Framework Document*, 15, available at [http://www.judicialappointments.gov.uk/static/documents/JAC\\_Framework\\_Document.pdf](http://www.judicialappointments.gov.uk/static/documents/JAC_Framework_Document.pdf).

<sup>384</sup> *Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina* art. 19 (Bosnia and Herzegovina 2002), available at <http://www.lexadin.nl/wlg/legis/nofr/eur/lxwebhe.htm>.

<sup>385</sup> Parliament, *Supreme Court 2009*, available at <http://www.parliament.uk/about/livingheritage/evolutionofparliament/judicialrole.cfm>.

powers between the branches and to promote greater judicial independence.<sup>386</sup> Similarly, in 1983 the Chinese legislature utilized its power to create courts by establishing maritime, forests, and railway transport courts to increase efficiency and accountability.<sup>387</sup> Furthermore, legislatures may enact laws that affect the conduct of judicial proceedings to promote quality, efficiency, and enhanced public accountability. For instance, the Swedish Parliament adopted a law that mandated diligent investigation of cases by courts and the proper maintenance of public records of oral hearings, among other procedural requirements.<sup>388</sup>

### Disciplinary and Complaint Processes

The disciplinary process is the method by which officials review, investigate, and resolve public complaints. While providing for disciplinary and complaint processes can promote accountability if properly crafted, these processes can also preserve judicial independence by guarding against undue influences over the judiciary's administration of justice.<sup>389</sup> However, the judicial disciplinary process is particularly susceptible to abuse by politically or personally motivated accusations, which could override established removal procedures.<sup>390</sup> Due to this potential for abuse, disciplinary processes frequently contain safeguards, such as an independent institution to oversee judicial complaints and discipline, as well as definite and explicit standards of misconduct.<sup>391</sup> A transitional government may consider the following mechanisms to process disciplinary and other complaints against the judiciary:

- **Judicial Council Review:** states often task an independent judicial governing institution, like a judicial council, with overseeing judicial discipline once a member of the public files a complaint. Following the 2010 amendments to the Turkish Constitution, the Supreme Council of Public Prosecutors and Judges has exclusive control over reviewing complaints of misconduct by members of the courts.<sup>392</sup> Judicial inspectors of the Council are responsible for investigations into

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<sup>386</sup> DEPARTMENT FOR CONSTITUTIONAL AFFAIRS, CONSTITUTIONAL FORM: A SUPREME COURT FOR THE UNITED KINGDOM (July 2003), available at <http://www.dca.gov.uk/consult/supremecourt/>.

<sup>387</sup> *Organic Law of the People's Courts of the People's Republic of China*, art. 2 (China, 1983), available at [http://www.novexcn.com/organic\\_law.html](http://www.novexcn.com/organic_law.html).

<sup>388</sup> *The Administrative Court Procedure Act*, § 8 (Sweden 1995), available at <http://www.sweden.gov.se/content/1/c6/02/61/43/7d1cf048.pdf>.

<sup>389</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 14-15 (June 2009), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/Reducing\\_Corruption\\_Judiciary\\_June09.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/Reducing_Corruption_Judiciary_June09.pdf).

<sup>390</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 14-15 (June 2009).

<sup>391</sup> Heike Gramckow, *International Trends – Strengthening Judicial Independence and Accountability*, in FUTURE TRENDS IN STATE COURTS 112 (National Center for State Courts, 2005).

<sup>392</sup> Consulate General of Turkey, *The Constitution Reform Package* (Dec. 5, 2010), available at [http://www.turkishconsulate.org.uk/en/read\\_news.asp?newsID=131](http://www.turkishconsulate.org.uk/en/read_news.asp?newsID=131).

misconduct.<sup>393</sup> Since members of the council are not sitting judges, they may be more able to objectively investigate and independently oversee complaints.<sup>394</sup>

- **Review by Independent Agencies:** states may provide for an authority other than a judicial council to oversee the complaint process in order to provide an additional level of independence or, alternatively, greater accountability.<sup>395</sup> In Austria, the Ministry of Justice created intermediary offices, headed by experienced judges around the state to receive and treat the complaints brought by individuals who are party to the proceedings at issue.<sup>396</sup> The process preserves judicial independence by preventing the intervention of the intermediary office into pending proceedings.<sup>397</sup> In contrast, in the United Kingdom, the Judicial Appointments Commission ensures the accountability of the process by intervening at a later stage to determine whether the disciplinary authority is properly handling an individual complaint regarding a judge's conduct.<sup>398</sup>
- **Criminal Sanctions:** Officials may borrow an additional safeguard from criminal law to protect against potential abuses of the disciplinary process: the enumeration of explicit, definite, and non-retroactive offenses of misconduct. For instance, the law in Bosnia and Herzegovina provides a list of specific offenses that includes professional negligence, recurrent or unjustified delays in issuing a decision, and failure to disqualify oneself if a conflict of interest exists.<sup>399</sup> However, built into these discrete, enumerated offenses is a modicum of flexibility inherent in the undefined terms "conflict of interest," "negligence," and "unjustified delay."<sup>400</sup> The flexibility combined with explicit enumeration of offenses may maximize the ability of authorities to hold judges accountable for most if not all types of misconduct, while at the same time preserving independence by deliberately limiting the bases for disciplining judges. In contrast, Spanish law does not establish separate standards of ethical conduct because the laws against misconduct have developed through case law.<sup>401</sup>

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<sup>393</sup> Consulate General of Turkey, *The Constitution Reform Package* (Dec. 5, 2010).

<sup>394</sup> Consulate General of Turkey, *The Constitution Reform Package* (Dec. 5, 2010).

<sup>395</sup> International Commission of Jurists, *Practitioners' Guide No. 1, Independence of Judges, Lawyers, and Prosecutors*, 57 (2004), available at <http://www.mafhoum.com/press7/230S24.pdf>.

<sup>396</sup> Ministry of Justice, *The Austrian Judicial System*, 42 (January 2009), available at [http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die\\_justiz\\_eng\\_05.09.pdf](http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die_justiz_eng_05.09.pdf).

<sup>397</sup> Ministry of Justice, *The Austrian Judicial System*, 42 (January 2009).

<sup>398</sup> Judicial Appointments and Conduct Ombudsman, available at <http://www.judicialombudsman.gov.uk/>.

<sup>399</sup> *Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina* art. 40 (Bosnia and Herzegovina 2002).

<sup>400</sup> *Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina* art. 40 (Bosnia and Herzegovina 2002).

<sup>401</sup> John Bell, *JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW* 186 (2006).

However, the Spanish system may significantly reduce both the independence and the accountability of the judiciary because of the ambiguity and uncertainty surrounding what may constitute an offense.<sup>402</sup>

### Management and Governance of the Judiciary

The system established to govern the rules and conduct of a state's judiciary has the potential to significantly affect the judiciary's independence and accountability. A judicial governance system determines the involvement of each branch of government in the administration of the courts, the judiciary's work, and court personnel.<sup>403</sup> States often establish an independent governing institution that is separate from the branches of government, but accountable to one of them.<sup>404</sup> Depending on its composition, such an authority can operate as a shield from political influence on the judiciary while still providing for its accountability to the executive, the legislature, or both.<sup>405</sup> Regardless of which institution is in charge of managing and governing the judiciary, its role generally includes appointment and discipline as well as improving judicial efficiency, especially by setting performance goals.<sup>406</sup> Reforming the management and governance of the judiciary may involve the following approaches:

- **Management by a Judicial Council:** Many states have adopted judicial councils to oversee and manage the administrative functions of the judicial system. In 2001, Bahrain instituted the Supreme Judicial Council to separate the judiciary's administrative and judicial functions.<sup>407</sup> The Council oversees the courts and their rulings.<sup>408</sup> The establishment of an independent judicial council may prove most effective when the council has the power to make binding regulations concerning the judiciary, and when the membership of the judicial council is not politicized, stacked, or self-appointed. The Spanish judicial council, called the *Consejo*, possesses significant power, as it is provided for in the Constitution and can establish general rules to govern the judiciary.<sup>409</sup> While

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<sup>402</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 186 (2006).

<sup>403</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 22 (2006).

<sup>404</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 22 (2006).

<sup>405</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 22 (2008).

<sup>406</sup> Nuno Garoupa, Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, PUBLIC LAW AND THEORY PAPERS NO. 250, 21 (2008).

<sup>407</sup> The Jurist, *Bahrain*, UNIVERSITY OF PITTSBURG SCHOOL OF LAW (2003), available at <http://jurist.law.pitt.edu/world/bahrain.htm>.

<sup>408</sup> The Jurist, *Bahrain*, UNIVERSITY OF PITTSBURG SCHOOL OF LAW (2003).

<sup>409</sup> Joaquín Delgado Martín, *El Consejo General del Poder Judicial en 25 Preguntas* 11, available at <http://www.poderjudicial.es>.

the *Consejo* does not have legislative power, its regulations are nonetheless binding on the courts.<sup>410</sup>

- **Shared Authority over Judicial Management:** A division of authority in governing the judiciary can provide greater oversight over the operation of the judiciary. One instance of this is the Swedish judicial council, which shares judicial oversight authority with the Ministry of Justice.<sup>411</sup> However, the involvement of the executive branch in both the appointment of the judicial council members and in the determination of the general agenda and budget of the council makes the Swedish judiciary less independent than the council in Spain.<sup>412</sup> Similarly, the Supreme Council of Public Prosecutors and Judges in Turkey is an independent oversight council, but the Minister of Justice sits on the Council and is involved with some of the decision making.<sup>413</sup> This structure provides Turkey's executive branch with some control over the Council's decisions.
- **Fixed Performance Goals:** Governing authorities may also improve accountability of the judiciary by setting performance goals for judges, which allows for an objective assessment of the judicial system.<sup>414</sup> In Sweden, the Ministry of Justice fixes performance goals for different categories of cases, and the National Courts Administration produces statistics on judicial efficiency and the meeting of these goals.<sup>415</sup> Since the National Courts Administration is in charge of transferring funds to each court, the evaluations encourage courts to improve performance in order to avoid budget cuts.<sup>416</sup> In Indonesia, the Supreme Court did not set specific performance goals, but instead regularly presented case data to judges in order to help them develop self-evaluation skills.<sup>417</sup> These measures increase accountability by enhancing judicial performance and formalizing standards that the judiciary is expected to meet.

### Financial Autonomy and Transparency

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<sup>410</sup> Joaquín Delgado Martín, *El Consejo General del Poder Judicial en 25 Preguntas* 11, available at <http://www.poderjudicial.es>.

<sup>411</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 240 (2006).

<sup>412</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 244 (2006).

<sup>413</sup> TURKEY CONST. art. 144 (1982).

<sup>414</sup> Hon. J. J. Spigelman, Speech for the 300th Anniversary of the Act of Settlement, *Judicial Accountability and Performance Indicators* (May 10, 2001), available at [http://www.lawlink.nsw.gov.au/lawlink/supreme\\_court/ll\\_sc.nsf/pages/SCO\\_speech\\_spigelman\\_100501](http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_speech_spigelman_100501).

<sup>415</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 241-42 (2006).

<sup>416</sup> John Bell, JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW 241 (2006).

<sup>417</sup> Asia Pacific Judicial Reform Forum, SEARCHING FOR SUCCESS IN JUDICIAL REFORM – VOICES FROM THE ASIA PACIFIC EXPERIENCE 124 (2009).

Financial autonomy is the relative control over and freedom from interference with finances, such as budgets and salaries. Financial transparency requires that budgetary and salary numbers are fully, accurately, and timely disclosed.<sup>418</sup> Financial autonomy is one of the strongest indicators of judicial independence, and financial transparency guarantees accountability without directly interfering with the work of judges.<sup>419</sup> On an institutional level, states promote both autonomy and accountability by involving the judiciary in budget procedures and by using transparency requirements—particularly judicial spending reports—to ensure public oversight.<sup>420</sup> On an individual level, providing for adequate judicial salaries and preventing other branches from reducing salaries reduce the corruption associated with bribery.<sup>421</sup> Meanwhile, adequate judicial salaries also ensure accountability by attracting qualified individuals to the profession, which contributes to a higher quality justice system.<sup>422</sup> Achieving this financial autonomy and transparency may be done through a range of manners, including providing appropriate oversight over the judiciary’s budget, creating adequate reporting requirements, and providing adequate salaries:

- **The Judiciary’s Budgetary Authority:** States may preserve accountability while promoting judicial independence by involving the judiciary, as well as the other branches of government in the setting of the budget.<sup>423</sup> In Japan, for instance, the Judicial Assembly, an administrative institution consisting of Justices of the Supreme Court, creates the budget and submits it to the Cabinet.<sup>424</sup> The risk of political interference is limited by requiring that the Cabinet make a detailed report of its reductions and justify them in case of contestation by the Court.<sup>425</sup> In Turkey, the Minister of Justice allocates funds to the courts from the General Budget of the state, but the courts independently determine their own expenditures.<sup>426</sup> In both instances, the cooperative processes preserve judicial independence and accountability. However, Turkey’s system does not

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<sup>418</sup> David L. Scott, WALL STREET WORDS: AN A TO Z GUIDE OF INVESTMENT TERMS FOR TODAY’S INVESTOR 388 (3rd ed. 2003).

<sup>419</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 14 (June 2009), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/Reducing\\_Corruption\\_Judiciary\\_June09.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/Reducing_Corruption_Judiciary_June09.pdf).

<sup>420</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 14 (June 2009).

<sup>421</sup> American Bar Association, *Judicial Reform Index for Bosnia and Herzegovina*, 29 (June 2009).

<sup>422</sup> American Bar Association, *Judicial Reform Index for Bosnia and Herzegovina*, 29 (June 2009).

<sup>423</sup> J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence From What and Why?*, NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW, Vol. 58, 241, 246 (2001-2003).

<sup>424</sup> J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence From What and Why?*, NEW YORK UNIVERSITY ANNUAL SURVEY OF AMERICAN LAW, Vol. 58, 241, 247 (2001-2003).

<sup>425</sup> Supreme Court of Japan, *Overview of the Judicial System in Japan*, (2006), available at [http://www.courts.go.jp/english/system/system.html#02\\_2](http://www.courts.go.jp/english/system/system.html#02_2).

<sup>426</sup> Consultative Council of European Judges, *Questionnaire on the Independence of Judges, Their Appointment and Careers, and Funding of the Courts: Reply Submitted by Turkey* (2001), available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1055653&Site=COE>.

allow the courts enough input into the allocation process, so the amount of allocated funds does not meet the budgetary needs of the courts.<sup>427</sup>

- **Reporting Requirements:** A number of states promote financial transparency by requiring the judiciary to report on its activities and spending.<sup>428</sup> The United Kingdom, for one, requires the Judicial Appointments Commission to report to Parliament on its activities and operations as soon as possible after each fiscal year.<sup>429</sup> Similarly, the Bosnia and Herzegovina Council has to report annually to Parliament on its activities, which would likely include finances, and make recommendations for improvements regarding the judiciary's performance.<sup>430</sup> On an individual level, requiring judicial officials to perform routine financial disclosures can increase accountability by preventing corruption and highlighting potential conflicts of interest.<sup>431</sup> In Georgia, for instance, judges are required to disclose the type, location, and value of their assets, including securities, bank deposits, business interests, employer information, contracts, transfer of assets, and any large increase in bank accounts.<sup>432</sup> The Argentinean Supreme Court similarly adopted rules for judicial financial reporting, which require judges to annually declare their own assets and liabilities, as well as those of their spouses and minor children.<sup>433</sup> The most effective reporting systems will also ensure that the public has access to financial disclosures.<sup>434</sup> The Peruvian Constitution explicitly protects the public's right to access such information and parts of the financial reports are published

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<sup>427</sup> Consultative Council of European Judges, *Questionnaire on the Independence of Judges, Their Appointment and Careers, and Funding of the Courts: Reply Submitted by Turkey* (2001).

<sup>428</sup> USAID, Program Brief, *Reducing Corruption in the Judiciary*, 14 (June 2009).

<sup>429</sup> Department of Constitutional Affairs, *Judicial Appointments Commission Framework Document*, 15 (October 2006), available at [http://www.judicialappointments.gov.uk/static/documents/JAC\\_Framework\\_Document.pdf](http://www.judicialappointments.gov.uk/static/documents/JAC_Framework_Document.pdf).

<sup>430</sup> *Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina* art. 19 (Bosnia and Herzegovina 2002), available at <http://www.lexadin.nl/wlg/legis/nofr/eur/lxwebhe.htm>.

<sup>431</sup> Sandra Elena, et. al., GLOBAL BEST PRACTICES: INCOME AND ASSET DISCLOSURE REQUIREMENTS FOR JUDGES: LESSONS LEARNED FROM EASTERN EUROPE AND LATIN AMERICAN 1 (Keith Henderson, ed., 2004).

<sup>432</sup> Sandra Elena, et. al., GLOBAL BEST PRACTICES: INCOME AND ASSET DISCLOSURE REQUIREMENTS FOR JUDGES: LESSONS LEARNED FROM EASTERN EUROPE AND LATIN AMERICAN 10 (Keith Henderson, ed., 2004).

<sup>433</sup> Sandra Elena, et. al., GLOBAL BEST PRACTICES: INCOME AND ASSET DISCLOSURE REQUIREMENTS FOR JUDGES: LESSONS LEARNED FROM EASTERN EUROPE AND LATIN AMERICAN 5 (Keith Henderson, ed., 2004).

<sup>434</sup> Scott Wordern & Leigh Toomey, *Judicial Independence & Financial Disclosure*, RIGHT TO RULE OF LAW: DISCUSSION MATERIALS COMPILED BY NDI FOR THE DISTRICT MULTI-STAKE HOLDER FORUMS ON CONSTITUTION AND PEACEFUL CO-EXISTENCE 37 (2007), available at <http://www.scribd.com/doc/36446884/The-Right-to-Rule-of-Law-English>.



in a national newspaper.<sup>435</sup> Implementing such a reporting system may reduce corruption and conflicts of interest.<sup>436</sup>

- **Salaries:** Providing sufficiently high salaries for judges can promote judicial accountability, as it helps attract highly qualified candidates who will improve the quality of the judicial system and lessens the role that monetary influence can play in the judiciary's execution of its duties. Spanish law, for instance, expressly requires that judges' salaries guarantee financial independence to reduce the risk of corruption.<sup>437</sup> Bosnia and Herzegovina took concrete steps to raise individual judicial salaries by 40% in 2004, in order to provide judges with a reasonable lifestyle and limit the chances of corruption in the judiciary.<sup>438</sup>

Moreover, constitutionally-protected salaries and benefits advance independence by ensuring financial stability and shielding judges from political pressure. In Spain, legislation fixes the precise amount of the judges' salaries, and also provides social security for judges and their families during active service and retirement.<sup>439</sup> Japan constitutionally protects judges against salary reductions,<sup>440</sup> illustrates a unique safeguard. The Japanese legislature determines judicial salaries, but the salaries of the Supreme Court judges are pegged to the salaries of other public servants.<sup>441</sup> More particularly, the chief justice's salary is the same amount as the prime minister's, and the other justices receive a salary equal to those of the ministers of state.<sup>442</sup> The equality in salaries between members of different branches makes it difficult for the executive or the legislative branches to interfere with the salaries of the judicial branch without also making corresponding changes to their own salaries.<sup>443</sup>

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<sup>435</sup> PERU CONST. art. 40-41 (1993), available at [http://www.parliament.go.th/parcy/sapa\\_db/cons\\_doc/constitutions/data/Peru/peru.pdf](http://www.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Peru/peru.pdf); Sandra Elena, et. al., GLOBAL BEST PRACTICES: INCOME AND ASSET DISCLOSURE REQUIREMENTS FOR JUDGES: LESSONS LEARNED FROM EASTERN EUROPE AND LATIN AMERICAN 17-18 (Keith Henderson, ed., 2004).

<sup>436</sup> United States Agency for International Development, GUIDANCE FOR PROMOTING JUDICIAL INDEPENDENCE & IMPARTIALITY 33 (2002), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/pnacm007.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf).

<sup>437</sup> *Organic Law 6/1985 (1 July, 1985) of the Judicial Power* art. 402 (Spain, 1985), available in Spanish at <http://www.derecho.com/l/boe/ley-organica-6-1985-poder-judicial/#E1>.

<sup>438</sup> American Bar Association, *Judicial Reform Index for Bosnia and Herzegovina*, 29 (June 2009).

<sup>439</sup> *Organic Law 6/1985 (1 July, 1985) of the Judicial Power* art. 402 (Spain, 1985).

<sup>440</sup> JAPAN CONST. art. 80(2) (1946), available at <http://www.constitution.org/cons/japan.txt>.

<sup>441</sup> John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, 8 (Washington University in St. Louis School of Law, Working Paper, Oct. 5, 2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=821466](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=821466).

<sup>442</sup> John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, 8 (Washington University in St. Louis School of Law, Working Paper, Oct. 5, 2005).

<sup>443</sup> John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, 8 (Washington University in St. Louis School of Law, Working Paper, Oct. 5, 2005).

## Reform of the Court System

A court system may include common courts of general subject-matter jurisdiction as well as specialized courts of limited subject-matter jurisdiction, which will only hear certain types of cases. Specialized courts of limited subject-matter jurisdiction may serve to improve the accountability of the judiciary by increasing judicial efficiency. The creation of specialized courts results in the development of expert judges able to provide expedient and higher quality judgments, while reducing costs and backlogs by freeing the general courts of potentially time-consuming and complex cases.<sup>444</sup>

### Constitutional Courts

Most states create a court with specific jurisdiction over constitutional matters because of the importance of constitutional interpretation, and because of the complexity of cases involving constitutional issues. The creation of a constitutional court promotes accountability as it allows for a uniform interpretation of the constitution to which all the other courts are required to conform.<sup>445</sup> In Turkey, for instance, the Constitutional Court has exclusive jurisdiction over all constitutional disputes.<sup>446</sup> The German Constitutional Court also exercises exclusive jurisdiction over constitutional matters, which serves to funnel all constitutional questions to one body to resolve.<sup>447</sup> Iran however, does not have a specific constitutional court. Rather, the Guardian Council, a 12-member entity, is tasked with confirming that legislation enacted by the Iranian Parliament (Majlis) aligns with the Islamic Republic of Iran's Constitution and the principles of Islamic law (Sharia).

### Other Specialized Courts

More generally, states tend to divide their court system into several divisions and create specialized courts with particularized jurisdiction. Such a system typically helps reduce costs and delays in general courts. The German court structure, for instance, is characteristically specialized in nature, as there are five hierarchies apart from the general civil and criminal courts at the provincial level: (1) administrative courts, (2) labor courts, (3) patent courts, (4) social courts, and (5) finance courts.<sup>448</sup> Each of these courts exists at the first instance level as well as the appellate level.<sup>449</sup> These specialized courts relieve the general courts of complex cases such

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<sup>444</sup> Stephen H. Legomsky, *SPECIALIZED JUSTICES: COURTS, ADMINISTRATIVE TRIBUNALS, AND A CROSS-NATIONAL THEORY OF SPECIALIZATION* 9 (1990).

<sup>445</sup> Stephen H. Legomsky, *SPECIALIZED JUSTICES: COURTS, ADMINISTRATIVE TRIBUNALS, AND A CROSS-NATIONAL THEORY OF SPECIALIZATION* 28-29 (1990).

<sup>446</sup> American Bar Association, *Judicial Reform Index for Bosnia and Herzegovina*, 6 (June 2009).

<sup>447</sup> TURKEY CONST. art. 146 (1982).

<sup>448</sup> Nigel G. Foster and Satish Sule, *GERMAN LEGAL SYSTEM & LAWS* 68 (2002).

<sup>449</sup> John Bell, *JUDICIARIES WITHIN EUROPE: A COMPARATIVE REVIEW* 110 (2006).

as labor disputes, providing more time to general courts in decreasing the time required to issue a final decision on disputes.<sup>450</sup> In Rwanda, the division of trial courts into specialized chambers for tax, financial, and business disputes contributed to reducing delays in proceedings by 22%, which in turn significantly diminished the costs incurred by the parties.<sup>451</sup>

Iran also has a judicial structure in place to address various legal matters. Though not as specialized as the German court system, Iran's courts include General Courts for civil and criminal cases, the Special Clerical Court for clerical offenses and religious law, Military Courts for cases involving military personnel, the Administrative Justice Court for disputes between citizens and public entities, and the Supreme Court as the highest appellate court. Additionally, there are the Revolutionary Courts that address offenses against national security and other crimes aimed at undermining the Islamic Republic, such as cases involving political dissidents.

Legislative control or reform of courts' jurisdiction may foster accountability of the judiciary at the expense of independence if the other branches use it as an indirect means to exert pressure on courts.<sup>452</sup> Officials may provide for specific safeguards to protect against the possibility of abuse. For instance, providing for each court's jurisdiction in the constitution makes legislative modification more difficult.<sup>453</sup> Yet, the legislature may also modify the actual geographic boundaries of courts' jurisdiction in order to improve judicial efficiency. This was the case in France, for instance, where the reform of the judicial map reduced the number of courts.<sup>454</sup> French officials designed the reform to improve the judiciary's efficiency by reallocating resources to courts that needed them most.<sup>455</sup> However, granting the legislature the power to determine subject matter jurisdiction, as the United States Constitution does, may undermine judicial independence.<sup>456</sup> Indeed, the United States Congress has stripped the Supreme Court of its appellate jurisdiction over certain cases, including immigration and asylum cases, without amending the Constitution.<sup>457</sup>

### Public Education, Awareness, and Access

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<sup>450</sup> Stephen H. Legomsky, *SPECIALIZED JUSTICES: COURTS, ADMINISTRATIVE TRIBUNALS, AND A CROSS-NATIONAL THEORY OF SPECIALIZATION* 9 (1990).

<sup>451</sup> World Bank, *DOING BUSINESS IN 2006: CREATING JOBS* 62 (2006).

<sup>452</sup> American Judicature Society, *Curtailment of Jurisdiction*, available at [http://www.ajs.org/cji/cji\\_jurisdiction.asp](http://www.ajs.org/cji/cji_jurisdiction.asp).

<sup>453</sup> Patrick Baude, *JUDICIAL JURISDICTION: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION* 42 (2007).

<sup>454</sup> Ministry of Justice, *The Judiciary in France*, 27 (September 2008), available at [http://www.justice.gouv.fr/art\\_pix/plaquette\\_justiceenfrance\\_angl.pdf](http://www.justice.gouv.fr/art_pix/plaquette_justiceenfrance_angl.pdf).

<sup>455</sup> Ministry of Justice, *The Judiciary in France*, 27 (September 2008), available at [http://www.justice.gouv.fr/art\\_pix/plaquette\\_justiceenfrance\\_angl.pdf](http://www.justice.gouv.fr/art_pix/plaquette_justiceenfrance_angl.pdf).

<sup>456</sup> UNITED STATES CONST. art. III § 2 (1787), available at [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html).

<sup>457</sup> American Judicature Society, *Curtailment of Jurisdiction*, available at [http://www.ajs.org/cji/cji\\_jurisdiction.asp](http://www.ajs.org/cji/cji_jurisdiction.asp).

Developing public understanding of the judicial system may lead to a more accountable judiciary because it renders justice more transparent. It also may encourage public awareness of and engagement with the judiciary, which in turn opens the judiciary to public scrutiny.<sup>458</sup> States often improve public understanding of the judiciary through public education programs on judicial functions and structure, publicly available court documents, and free or low-cost legal aid. These mechanisms all contribute to providing the public with greater access to justice and encourage judicial accountability.<sup>459</sup>

An increased public familiarity with the legal system may, in turn, develop a better public assessment of the functioning of the judicial system. In Sweden, the judiciary contributes to public education by publishing informational brochures and pamphlets explaining the purpose and functioning of Sweden's courts to make the people more familiar with the system.<sup>460</sup> In Bosnia and Herzegovina, posters inside court buildings detail and explain the procedures by which the public may file a complaint about judicial misconduct.<sup>461</sup> Providing the public with such information may not only provide the public with better tools to assess the quality and administration of justice but may also have a self-disciplining effect on the judiciary by placing judges on notice that the standards of conduct are widely known and enforceable.

Many states provide public access to court documents to promote transparency of the judiciary and allow the public themselves to assess how judges administer the law. Enhanced public awareness, in turn, better equips the populace to influence their elected representatives on these matters.<sup>462</sup> The Minister of Justice in Turkey has instituted a large scale collection of judicial documents in a free electronic database called the National Judiciary Informatics System.<sup>463</sup> The System aims to publish all documents from the courts, prisons, decisions of the Court of Cassation, judicial data on the army and police forces, and legislation.<sup>464</sup> The Austrian judiciary developed internet databases, accessible to the public free of charge, which contain decrees and case law of Austrian courts, including specialized courts.<sup>465</sup>

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<sup>458</sup> Wim Voermans, *Judicial Transparency Furthering Public Accountability for New Judiciaries*, 3 UTRECHT LAW REVIEW 148, 149 (2007).

<sup>459</sup> Wim Voermans, *Judicial Transparency Furthering Public Accountability for New Judiciaries*, 3 UTRECHT LAW REVIEW 148, 150 (2007).

<sup>460</sup> The Government Offices of Sweden, *Introducing the Swedish Courts*, available at [http://www.hogstodomstolen.se/templates/DV\\_InfoPage\\_\\_\\_\\_877.aspx](http://www.hogstodomstolen.se/templates/DV_InfoPage____877.aspx).

<sup>461</sup> American Bar Association, *Judicial Reform Index for Bosnia and Herzegovina*, 44 (June 2009), available at <http://www.abanet.org/rol/publications/bosnia-jri-2006-eng.pdf>.

<sup>462</sup> Wim Voermans, *Judicial Transparency Furthering Public Accountability for New Judiciaries*, 3 UTRECHT LAW REVIEW 148, 156-57 (2007).

<sup>463</sup> Pervin Dedeler Bezirci, *Accessing Legal Information in Turkey*, INTERNATIONAL JOURNAL OF LEGAL INFORMATION, Vol. 38(2), 174 (July 2010).

<sup>464</sup> Pervin Dedeler Bezirci, *Accessing Legal Information in Turkey*, INTERNATIONAL JOURNAL OF LEGAL INFORMATION, Vol. 38(2), 174 (July 2010).

<sup>465</sup> Ministry of Justice, *The Austrian Judicial System*, 35 (January 2009), available at [http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die\\_justiz\\_eng\\_05.09.pdf](http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die_justiz_eng_05.09.pdf).

Moreover, ensuring equal access to quality justice often requires officials to provide discounted or free legal assistance to the poor.<sup>466</sup> Apart from legal aid for representation in court, Sweden grants financial assistance for the payment of the costs of the execution of a judgment.<sup>467</sup> Austria also provides the public with lists of court-certified expert-witnesses as well as translators to facilitate the conduct of proceedings, which improves the quality of the judicial service.<sup>468</sup>

### *Considerations on Government, the Judiciary and Administration for a Transition Government*

With regards to government and administration, a transition government will need to consider the existing separation of powers between Iran's executive, legislative, and judicial branches alongside Iran's incorporation of theocratic norms into these institutions. A transition government may consider:

- Whether and how the role of the Supreme Leader of Iran may be revisited in line with the transition government's objectives. This may include considering:
  - The Supreme Leader's role as head of state;
  - The scope of powers possessed by the Supreme Leader;
  - The religious source of the Supreme Leader's authority; and
  - The constitutional basis for the Supreme Leader's role.
- Whether and how the role of the Assembly of Experts may be revisited in line with the transition government's objectives. This may include considering:
  - The Assembly of Experts' role in appointing and counseling the Supreme Leader of Iran;
  - The constitutional basis for the Assembly of Experts' powers; and
  - The Assembly of Experts' internal dynamics and stability.
- Whether and how the role of the President may be updated in line with the transition government's objectives. This may include considering:
  - The President's role as the second-highest authority in Iran, following the Supreme Leader; and
  - The role and responsibilities of the President in managing governmental affairs, implementing the country's laws, and establishing policies within a framework determined by the Supreme Leader.

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<sup>466</sup> Council of Europe, European Commission for the Efficiency of Justice, *EUROPEAN JUDICIAL SYSTEMS* 48 (2008).

<sup>467</sup> Council of Europe, European Commission for the Efficiency of Justice, *EUROPEAN JUDICIAL SYSTEMS* 50 (2008).

<sup>468</sup> Ministry of Justice, *The Austrian Judicial System*, 35 (January 2009), available at [http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die\\_justiz\\_eng\\_05.09.pdf](http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die_justiz_eng_05.09.pdf).

- Whether and how the role of the Iranian Parliament (Majlis) may be updated in line with the transition government's objectives. This may include considering:
  - The relationship between the Majlis and clerical groups;
  - The unicameral nature of the Majlis; and
  - The relationship between the Majlis and the Guardian Council.
- Whether and how the role of the Guardian Council may be revisited in line with the transition government's objectives. This may include considering:
  - The structure of the Guardian Council
  - Its role and relationship with the Iranian government;
  - Its scrutiny of the legislation enacted by the Majlis in line with Islamic tenets; and
  - Its role in defining Iran's electoral process.
- Whether and how the role of the Expediency Council may be revisited in line with the transition government's objectives. This may include considering:
  - The oversight function the Expediency Council has over disputes between the Majlis and the Guardian Council; and
  - The power that the Supreme Leader holds over the Expediency Council.
- Whether and how the role of the Supreme National Security Council may be updated in line with the transition government's function. This may include considering:
  - The responsibility of the Supreme National Security Council to ensure collaboration between branches of the government, military, and intelligence agencies;
  - The members that comprise the Supreme National Security Council; and
  - The Supreme Leader's power over the Supreme National Security Council.
- Whether and how power in Iran may be decentralized. This may include:
  - Distributing powers and responsibilities to local governments;
  - Transferring powers and responsibilities to administrative agencies;
  - Providing for increased local-level elections;
  - Providing adequate financial support and authority to local governments and administrative agencies; and
  - Conducting decentralization with sufficient oversight, especially over funds.
- Whether, how and by whom national and provincial governments should be run and monitored during transition.
- Whether and how decentralization appropriately reflects the views of the public of Iran.
- Whether and how the judiciary should be appointed, including whether the Chief Justice should be appointed by the Supreme Leader.
- Whether and how an independent regulatory body for the formation of political parties during transition might be established.
- Whether and how an independent electoral supervisory body might be deployed during transition (potentially composed of domestic and international functionaries).

- Whether and how national companies and organizations like Iran National Oil Company or state media organizations should be operating.
- Whether and how Islamic courts should function in relation to the other domestic courts of Iran (civil, criminal, and military).
- Whether judicial reform requires the amendment of Iran's constitution.
- Whether the ratification of certain international human right would facilitate judicial reform;
- Supporting the development of the judiciary through a range of factors, including:
  - Reforming the appointment process to be more independent, fair, transparent, and accountable;
  - Reforming the judicial removal process and judgeship tenure to be clearly defined, with clear limits (not a life tenure), and transparency;
  - Involving other branches of government in the judicial removal process, so that the judiciary is not self-regulating the judicial removal process;
  - Establishing legislation and legislative oversight over the appointment and removal of judges;
  - Establishing clear disciplinary and complaint procedures against the judiciary, including through the creation of a disciplinary council or agency;
  - Establishing a management body that will govern the judiciary;
  - Providing the judiciary with financial autonomy over its actions;
  - Providing the public and legislature with sufficient funding and financial transparency over the judiciary's actions;
  - Establishing specialized courts and delineating subject-matter jurisdiction between courts; and
  - Increasing public education regarding, awareness of, and access to the judiciary.

## Women and Transitional Justice

Women in Iran have traditionally been active members of Iranian society. However, laws and regulations enacted during the Iranian Revolution sought to restrict women's rights. Since 1979, Iranian women have fought to regain their freedoms and an equal place in society. Women's roles in the development and implementation of transition are found to be key to the success of transitions.<sup>469</sup> This section draws upon international practice to evaluate the advancement of transitional justice and recommend potential opportunities and considerations that could apply to Iran. The case studies examined each involved a state where women played crucial roles in fighting for justice while the country's government went through transitional processes.

### *A History of Iranian Women in Transition*

Under Mohammad Reza Pahlavi, Iran underwent the so-called 'White Revolution,' which included an aggressive modernization and westernization program promoted by Mohammad Reza Pahlavi combined with widespread repressions of socio-political movements through censorship and surveillance. As part of this revolution, under the rule of Mohammed Reza Pahlavi, women were able to obtain higher education, work for the government, and hold influential positions.

In 1978, the Iranian Revolution (also known as the Islamic Revolution) was ignited and, in part, grew from ideas that Ayatollah Ruhollah Khomeini wrote about while in exile. Iranian women played an active role in the Iranian Revolution from 1978 to 1979 by participating in protests, journalism, healthcare, and other sectors, encouraged by the idea of advancement of women's rights.<sup>470</sup> These women varied in age, religion, education, and socioeconomic status, but were united in their collaboration for the advancement of women's rights in Iran.

The Iranian Revolution led to the establishment of an Islamic Republic in 1979. In its aftermath and under Khomeini's leadership, much of the progress made with respect to women's

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<sup>469</sup> UN Women & UNDP, *Women's Meaningful Participation in Transitional Justice Advancing Gender Equality and Building Sustainable Peace*, 18 (Mar. 2022), available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.unwomen.org/sites/default/files/2022-03/Research-paper-Womens-meaningful-participation-in-transitional-justice-en.pdf>.

<sup>470</sup> Haleh Esfandiari, *Reconstructed Lives: Women and Iran's Islamic Revolution*, WILSON CENTRE (Oct. 13, 1997), available at <https://www.wilsoncenter.org/article/reconstructed-lives-women-and-irans-islamic-revolution>.



rights was undone.<sup>471</sup> The Family Protection Laws that allowed women to divorce their husbands were suspended. The legal age of marriage for women was lowered to 9, and women lost the right to custody of children.<sup>472</sup> Women were required to wear hijab or be subject to harsh punishments, including jail time. Women were pushed into jobs that were seen as traditionally meant for women such as teaching and nursing. Although some women held positions in Parliament, most women in decision-making positions were forced to retire, take a demotion, or otherwise be removed from office. Further, the constitution barred women from holding the position of Supreme Leader. All women who have tried to run in presidential elections have been disqualified.

Following Khomeini's death in 1989, Ayatollah Ali Khamenei has functioned as Iran's Supreme Leader. Since 1989 there has been some evolution to women's role in society and politics, which has ramifications for women's potential roles in transitional justice. Social controls on women have over time eased, although minimally, including less public harassment of women and minor changes in laws governing the status of women.<sup>473</sup> Parts of the Family Protection Laws were reinstated with certain modifications. Women played a greater role in advising and campaigning for presidential candidates and were appointed to parliament, vice president, and deputy minister. Women began enrolling in higher education at greater rates and became more involved in the workforce and entrepreneurship.<sup>474</sup> Women's roles in transitional justice continue to evolve in modern times, including most recently with sharing images and stories of women's struggles on social media. Considering the continuing and rife oppression that women experience in Iran, it is useful to explore and understand how women have influenced the transitional justice process in other countries and whether, within those countries, women have succeeded in establishing improved women's rights outcomes in the state following transitional justice processes.

### *Comparative State Practice on Women and Transitional Justice*

This section explores four case studies regarding the role of women in transitional justice. It examines the role of various political leaders, legislative reforms, women's organizations, and societal shifts in shaping the trajectory of women's rights in the four countries. Similar strategies may be used to advance the role of women in transitional justice in Iran.

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<sup>471</sup> Haleh Esfandiari, *Reconstructed Lives: Women and Iran's Islamic Revolution*, WILSON CENTRE (Oct. 13, 1997), available at <https://www.wilsoncenter.org/article/reconstructed-lives-women-and-irans-islamic-revolution>.

<sup>472</sup> Haleh Esfandiari, *Iran and the women's question*, ATLANTIC COUNCIL (Feb. 4, 2019), available at <https://www.atlanticcouncil.org/blogs/iransource/iran-and-the-women-s-question/>.

<sup>473</sup> Haleh Esfandiari, *Iran and the women's question*, ATLANTIC COUNCIL (Feb. 4, 2019), available at <https://www.atlanticcouncil.org/blogs/iransource/iran-and-the-women-s-question/>.

<sup>474</sup> Haleh Esfandiari, *Iran and the women's question*, ATLANTIC COUNCIL (Feb. 4, 2019), available at <https://www.atlanticcouncil.org/blogs/iransource/iran-and-the-women-s-question/>.

- Tunisia

In 1956, Tunisia achieved independence from French colonial rule, marking a pivotal moment in the nation's history. Before 1956, women's rights and roles in society were closely tied to a conservative interpretation of Islam, which focused on traditional values and restricted women's rights in family life, including inheritance, marriage, and divorce. In traditional Tunisian society, inheritance laws were often discriminatory against women. Islamic law, which governed inheritance practices, typically favored male heirs over female heirs. Sons were entitled to inherit larger shares of the family estate compared to daughters. This practice perpetuated gender disparities in wealth and property ownership. Marriage was typically arranged by families, and women had limited agency in choosing their partners. Polygamy was permitted under Islamic law, allowing men to have multiple wives simultaneously, which further marginalized women's rights within marriage. Divorce was also primarily within the husband's control, with women having limited rights and often facing social stigma if they sought divorce.

Women's access to education and employment opportunities was generally limited, especially in comparison to men. Cultural norms often dictated that women's primary role was within the household, caring for children and managing domestic responsibilities. Consequently, many women were not encouraged to pursue higher education or enter the workforce. Women had limited legal rights and protections, particularly in matters such as child custody and property ownership. Legal frameworks tended to prioritize male authority within the family structure, leaving women with few avenues for recourse in cases of abuse or discrimination. During this time, women's social status was largely defined by their roles within the family and community. While some women may have held influential positions or engaged in community activities, their autonomy and agency were often circumscribed by patriarchal norms and societal expectations.

#### Personal Status Code

In 1956, following Tunisia's independence from France, its then-President, Bourguiba, oversaw the expansion of women's rights, including through the adoption of the Personal Status Code (PSC), which, among other things, eliminated polygamy, abolished the ability of a husband to repudiate his wife, created a minimum legal age of 17 for women to marry, and permitted women to file for divorce. The PSC introduced principles of gender equality in matters of family law, overturning discriminatory practices that had long disadvantaged women. Prior to the PSC, women faced unequal treatment in areas such as marriage, divorce, inheritance, and child custody. The PSC granted women greater legal rights and protections, ensuring that they were

treated as equals before the law. One of the most significant provisions of the PSC was the abolition of polygamy. Polygamy had been permitted under Islamic law, allowing men to have multiple wives at once. This practice often marginalized women and contributed to their economic and social vulnerability. By outlawing polygamy, the PSC protected women from the harms associated with polygamous marriages, such as financial insecurity and unequal treatment within the household.

The PSC granted women the right to initiate divorce, giving them greater agency and autonomy within marriage. This provision empowered women to leave abusive or unhappy marriages and pursue independent lives free from marital coercion. The PSC also established a minimum legal age of 17 for women to marry. This provision aimed to protect young girls from forced or early marriages, which had been prevalent in Tunisian society prior to the adoption of the PSC. By establishing a minimum age requirement, the PSC safeguarded the rights of young girls to education, health, and personal development, laying the groundwork for their empowerment. The PSC introduced reforms to inheritance laws, granting women equal rights to inherit property from their parents and spouses. The PSC aimed to rectify inequalities by ensuring that women received their fair share of inheritance, thus promoting economic independence and financial security for women.

#### National Union of Tunisian Women

President Bourguiba influenced women's rights in another manner by creating the National Union of Tunisian Women (NUTW) to implement the reforms. As a state-sponsored women's organization, the NUTW was tasked with implementing the reforms outlined in the PSC. The NUTW effectively mobilized women and advocated for the enforcement of women's rights guaranteed by the PSC, contributing to the advancement of gender equality in Tunisian society. Through its organizational efforts and grassroots initiatives, the NUTW played a pivotal role in ensuring the successful implementation of the PSC and the empowerment of Tunisian women.

#### Legislation

Following the Arab Spring of 2011, there was an even greater expansion of women's rights in Tunisia that was heavily influenced by an active women's rights movement. The 2014 Constitution of Tunisia explicitly provided for equality among men and women, which laid the foundation for a 2017 amendment to the PSC, which made it legal for Tunisian women who practiced Islam to marry non-Muslim men. The 2014 Constitution also stipulated that women must constitute at least fifty percent of all electoral party lists.

Women activists tried to impact the drafting of the Constitution primarily through two maneuvers: (1) a widespread media and popular campaign that focused on the idea of not turning back the clock or progress on the women's rights movement in Tunisia (and linking that expansion with the establishment of the successful nation state following the colonial period) and (2) forming meaningful and strategic alliances with groups of other ideological ways of thinking (primarily Ennahda). Feminist leaders within the Constituent Assembly brokered discussions with leaders of Ennahda regarding the inclusion of a principle of parity in elected councils between men and women. Over a period of months, the women's rights leaders advocated for the parity clause including the nitty-gritty detail of how it would be implemented. The approach was successful and the Constitution as ratified included the parity clause guaranteeing women at least fifty percent of spots on all electoral party lists.

The Tunisian parliament also passed a law in 2017 that prohibited all forms of gender-based violence. The law allows victims of domestic violence to seek protection orders from the authorities, which can include restraining orders to keep the abuser away from the victim and their place of residence or work. The law enables law enforcement agencies to take immediate action to protect victims of domestic violence in emergency situations, such as providing temporary shelter and removing the perpetrator from the home. Perpetrators of domestic violence are subject to legal penalties, including fines and imprisonment, based on the severity of the offense and are held accountable for their actions and face appropriate consequences. The law mandates the provision of support services for victims of domestic violence, including access to medical care, counseling, legal assistance, and shelters. These services aim to empower victims and help them rebuild their lives free from violence. Overall, the 2017 law represents a comprehensive legal framework aimed at preventing and addressing domestic violence in Tunisia. By providing legal protections for victims, imposing penalties on offenders, and promoting awareness and prevention efforts, the law seeks to create a safer and more equitable society for women.

### Truth and Dignity Commission

The Truth and Dignity Commission (TDC) was a transitional justice mechanism established by the National Constituent Assembly in Tunisia in 2013.<sup>475</sup> The mandate of the TDC was to investigate human rights violations committed by the state or its agents between July 1, 1955, and December 31, 2013. The Commission was tasked with uncovering the veracity of past abuses, providing justice to victims, and promoting national reconciliation. The

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<sup>475</sup> International Center for Transitional Justice, *ICTJ Welcomes Launch of Tunisia's Truth and Dignity Commission*, (Jun. 6, 2014), available at <https://www.ictj.org/news/ictj-welcomes-launch-tunisia%E2%80%99s-truth-and-dignity-commission>.

Commission reviewed complaints from victims detailing human rights violations, conducted investigations into alleged abuses, held public hearings to document victims' testimonies, and made recommendations for reparations and institutional reforms.<sup>476</sup>

The Tunisian government has taken steps to provide reparations to some victims of human rights abuses identified by the TDC, including financial compensation, medical and psychological support, and other forms of assistance.<sup>477</sup> However, the process of identifying eligible beneficiaries and disbursing reparations has been slow and uneven, leading to criticism from some victims' groups. The TDC made recommendations for institutional reforms aimed at addressing the root causes of past human rights violations and preventing future abuses. While some reforms have been enacted, such as changes to laws governing security forces and the judiciary, progress has been limited in other areas. Challenges such as bureaucratic resistance, political instability, and lack of resources have hindered the implementation of comprehensive institutional reforms. While the commission identified individuals responsible for abuses, including members of the former regime and state security forces, efforts to prosecute and bring them to justice, including members of the regimes under Presidents Bourguiba and Ben Ali, have been slow and contentious. Legal challenges, including issues related to evidence and due process, have complicated and stymied the prosecution of alleged perpetrators. The work of the TDC contributed to raising public awareness about historical human rights violations and promoting dialogue on issues of justice and reconciliation in Tunisian society. However, the process of reconciliation remains unfinished, with deep-rooted divisions and tensions persisting, particularly between victims and perpetrators.

Women played significant roles in the TDC as members of the Commission and as participants in its proceedings.<sup>478</sup> Members of the commission were responsible for conducting investigations, holding public hearings, and making recommendations for reparations and institutional reforms. Women commissioners brought diverse perspectives and expertise to the Commission's work, contributing to its effectiveness and credibility. Women were among the victims and witnesses who came forward to testify before the TDC. Many women shared their experiences of human rights abuses, including torture, sexual violence, and discrimination, during public hearings and private interviews conducted by commission members. Their

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<sup>476</sup> Ibrahim, Rashee & Nasirudeen, Ismail, *Transitional Justice Process: A Study of the Truth and Dignity Commission in Tunisia*, INTERNATIONAL JOURNAL OF HUMANITIES AND APPLIED SOCIAL SCIENCE 1 12, (Feb. 28, 2022) available at [10.33642/ijhass.v7n2p1](https://www.ijhass.v7n2p1).

<sup>477</sup> Amnesty International, *Tunisia: Struggle for justice and reparation continues for victims 10 years after the revolution*, (Jan. 14, 2021) available at <https://www.amnesty.org/en/latest/press-release/2021/01/tunisia-struggle-for-justice-and-reparation-continues-for-victims-10-years-after-the-revolution/>.

<sup>478</sup> UN Women, *Women's Meaningful Participation in Transitional Justice*, (Mar. 2022), available at [chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://www.unwomen.org/sites/default/files/2022-03/Research-paper-Womens-meaningful-participation-in-transitional-justice-en.pdf](https://www.unwomen.org/sites/default/files/2022-03/Research-paper-Womens-meaningful-participation-in-transitional-justice-en.pdf).

testimonies provided critical evidence of past human rights abuses and helped shed light on the experiences of women in Tunisia's history of repression and conflict.

Women's rights activists and organizations played a vital role in advocating for the establishment of the TDC and supporting its work.<sup>479</sup> These activists campaigned for the inclusion of gender-sensitive approaches in the commission's investigations and advocated for the recognition of women's rights violations as part of the broader transitional justice process. They also provided support and assistance to women victims of human rights abuses, including legal aid, counseling, and advocacy services. The TDC adopted a gender-sensitive approach to its work, recognizing the unique experiences and vulnerabilities of women in conflict and post-conflict settings. The commission took measures to ensure the participation of women in its proceedings, including providing safe spaces for testimony and addressing the specific needs of women victims. It also prioritized the investigation of gender-based violence and discrimination as part of its mandate to uncover the truth about past human rights violations. Women played integral roles in the TDC, contributing to its efforts to document human rights abuses, promote accountability, and advance gender equality and justice for all victims. Their participation and advocacy helped ensure that women's voices and experiences were central to the transitional justice process and the broader efforts to address Tunisia's history of repression and conflict.

- Sudan

Sudanese women play an important role in the transitional justice process. Sudan serves as a useful case study for understanding the complexities and dynamics of transitional justice marked by conflict, authoritarianism, and societal divisions.

Sudan has remained in a state of transitional justice throughout its recent history. In 1993, Omar al-Bashir appointed himself as president of Sudan.<sup>480</sup> During his time as president, he passed the Public Order Law which gave authorities the power to dictate what women wore, who they spoke to, and what jobs they could hold.<sup>481</sup> The Public Order Law also set the minimum age of marriage at 10 years old and required women to obtain a male guardian's permission to work outside of their marital home. The law led to women becoming the victims of gender-based

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<sup>479</sup> UN Women, *Women's Meaningful Participation in Transitional Justice*, (Mar. 2022), available at <chrome-extension://efaidnbmnnnibpcajpcgiclfndmkaj/https://www.unwomen.org/sites/default/files/2022-03/Research-paper-Womens-meaningful-participation-in-transitional-justice-en.pdf>.

<sup>480</sup> BBC News, *Sudan country profile*, 13 Sep. 2023, available at <https://www.bbc.com/news/world-africa-14094995#:~:text=Sudan%27s%20history%20goes%20back%20to,southern%20Sudan%20voted%20for%20independence>.

<sup>481</sup> Strategic Initiative for Women in the Horn of Africa (SIHA) and The Redress Trust (REDRESS), *Criminalisation of Women in Sudan A need for Fundamental Reform* (Nov. 2017) available at <chrome-extension://efaidnbmnnnibpcajpcgiclfndmkaj/https://redress.org/wp-content/uploads/2017/12/report-Final.pdf>.

violence, imprisonment, harassment, and further perpetrated gender inequality. Because of the strict laws surrounding women holding jobs, the Public Order Law left many women hidden from society and further diminished their representation in positions of power.

In 2018 and 2019, citizens of Sudan began protesting Omar al-Bashir's leadership, leading to a nationwide revolution. The Sudanese Revolution lasted for eight months and ended with Omar al-Bashir being removed from power. Women played a crucial role in the revolution but continue their efforts towards justice through the use of women's groups and social media.

### Role of Women's Groups

In Sudan, the formation of women's groups helped mobilize women's efforts towards justice. Many Sudanese women were already engaged in such efforts; however, the formation of these groups helped women to obtain funding, reduce security issues, and gain a platform for advocacy. The groups also gave women a safe space to discuss their thoughts on how best to mobilize their resources toward their goal of gender equality. These spaces are especially important in transitional societies where it can be unsafe to publicly disagree with those in power.

Sudanese women began developing women's groups in response to the Sudanese Revolution. Many of the women's groups developed were informational and advocacy-based groups. These groups function to raise awareness and share information amongst women in Sudan. They also focus on garnering international support by raising awareness of the gender inequalities to international organizations, such as the United Nations. During the Sudanese Revolution, a group of women formed the Women of Sudanese Civic and Political Group in order to organize women to fight for women's rights. Since the Public Order Law severely restricted women's freedom of movement, women in Sudan turned to technology to mobilize their efforts. The group was formed over the instant messaging app, WhatsApp, and began meeting in the members' private homes. Members of the group worked together to organize protests throughout the country and advocated for changes in legislation.

In 2019, a member of the group participated in negotiations at a meeting of the United Nations Security Council, and Alaa Salah gave a speech at the meeting. At the meeting of the United Nations Security Council, the group emphasized the gender disparities of women in Sudan's government and called for 50% parity in Sudan's new government composition. A month after the meeting, Abadalla Hamdok, Sudan's Prime Minister, and Sudan's transitional government repealed all laws which restricted women's freedom of movement, work, and education in Sudan. This action also removed any stipulations on Islamic dress in the public

morality laws. Additionally, Abadalla Hamdolk's action led to an increase in the number of women participating in the transitional government. The Women of Sudanese Civic and Political Group is just one of many women's groups that mobilized women across Sudan to advocate for gender equality. This group is just an example of how powerful and influential women's groups can be in a time of transitional justice.

### Role of Social Media

When countries experience turbulent times, such as in times of transitional justice, women's voices are often suppressed. As mentioned above, public morality laws in Sudan greatly restricted women's freedom of movement, association, and work. Thus, women were largely kept out of public spaces. Women in Sudan turned to social media to communicate with each other and people around the world. Women of Sudanese Civic and Political Group was formed over WhatsApp, an instant messaging app. Apps, such as WhatsApp, allow women to communicate privately at any time of day. Without the use of these apps, it would be difficult to find a safe space to congregate to discuss organizing protests and advancing women's rights.

Social media also makes it easier for women to reach a larger, international audience. The Sudanese women turned to media outlets to raise awareness and spread information about what was happening in their country. Their use of social media initially started as a way to inform the citizens of Sudan, but it ended up bringing international attention to the Sudanese Revolution. This attention led to international scrutiny of the Sudanese government, which put pressure on the Sudanese government to adhere to women's demands. International attention also helped women to hold people accountable during a time of transitional justice, such as military and government officials and the morality police. However, there's been a re-escalation of violence in Sudan and this is accompanied by criticism of the perceived failure of the international community to prevent the collapse of peace processes into conflict. In Sudan, the use of social media was pivotal in providing women safe spaces to freely discuss their thoughts and in mobilizing the revolution.

- Afghanistan

Women's rights have been the subject of significant advancements and setbacks throughout Afghanistan's history. Women officially gained equality under Afghanistan's constitution in 1964, which granted women the right to vote and run for office. During this time, women held positions in public office, obtained education, and appeared in the media. This period of



women's advancement was cut short by the government's transition to an Islamic state under Mohammad Najibullah in 1992.<sup>482</sup>

This period was marked by constant warfare in Afghanistan, which ended with the Taliban obtaining power and eradicating women's rights under the law. Women were no longer able to go to school, work outside the home, or leave their homes without a male guardian.<sup>483</sup> The war in Afghanistan led to a significant increase in gender-based violence as many women continued their participation in society as was permitted prior to Mohammad Najibullah's rule.

In 2001 the United States' and the United Kingdom invaded Afghanistan. The United States established a new government under Hamid Karzai, and women slowly regained their freedoms until 2012 when Hamid Karzai enacted a "code of conduct" reflective of a restrictive view of Islamic law. However, during this time, women continued to make advancements in society despite government restrictions until the Taliban's return to power in 2021.<sup>484</sup>

### Convention on the Elimination of Discrimination Against Women

Afghan women played an important role in the reconstruction process following the United States' invasion of Afghanistan. Women's rights activists fought for the ratification of the Convention on the Elimination of Discrimination Against Women (CEDAW), an international treaty adopted by the United Nations. The CEDAW requires its adoptees to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." States may ratify or accede to CEDAW, which legally binds the state to the provisions of the treaty, which includes eliminating all discriminatory laws, involving women in government and legal systems, and protecting women against discrimination through the creation of tribunals or other institutions. Additionally, the CEDAW requires states to submit national reports documenting the measures taken to comply with the provisions of the Convention.

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<sup>482</sup> Mona Chalabi, *Women in Afghanistan: From almost everywhere to almost nowhere* (15 Aug. 2023) available at <https://www.unwomen.org/en/news-stories/feature-story/2023/08/women-in-afghanistan-from-almost-everywhere-to-almost-nowhere>

<sup>483</sup> Mona Chalabi, *Women in Afghanistan: From almost everywhere to almost nowhere* (15 Aug. 2023) available at <https://www.unwomen.org/en/news-stories/feature-story/2023/08/women-in-afghanistan-from-almost-everywhere-to-almost-nowhere>

<sup>484</sup> BBC, *Afghanistan: Taliban ban women from universities amid condemnation* (21 Dec. 2022) available at <https://www.bbc.com/news/world-asia-64045497>; Secunder Kermani, *Afghanistan: What has changed in 20 years*, (10 Sep. 2021), available at <https://www.bbc.com/news/world-asia-58505044>.

Afghanistan ratified the CEDAW in 2003 and became the first muslim nation to ratify the treaty with no reservations.<sup>485</sup> The treaty influenced the drafting of Afghanistan's new constitution in 2003, and the convention's equality provision served as a model for their new constitution. Women participated in the drafting of Afghanistan's new constitution and continued seeking ways to best enforce the CEDAW.<sup>486</sup> The ratifications of United Nations' treaties place an international spotlight on governmental actions, especially in times of governmental transitions. Thus, it may be even more beneficial for women to advocate for state ratification of United Nations' treaties, such as CEDAW, during transition.

### Afghan Independent Human Rights Commission

During Hamid Karzai's rule, the Afghan Independent Human Rights Commission was formed.<sup>487</sup> The Commission was led by women's activist, Shaharзад Akbar and is a human rights institution that advocates for the establishment of equal rights for all. Additionally, the Commission served as an advisor for the Afghanistan government at the time. The Commission originally comprised 11 Commissioners, five of whom were women. In order to promote transitional justice, a mixed domestic tribunal approach was implemented, therefore, five women served as Commissioners.

The Commission listed women's rights as one of its top priority areas. It established a transitional justice unit, whose main areas of focus were documentation of women's past abuses and consultation with the public to identify the preferred measure of accountability. Because of the Commission's resources, it is better able to monitor human rights abuses, which leads to greater accountability. It is especially important in times of transitional justice that women participate in the political process. Here, because women served as commissioners, they were able to counsel the Afghanistan government whilst they were drafting a new constitution and developing new laws and regulations. Unfortunately, the Taliban recently dissolved the Commission in 2022.

- Morocco

During the turbulent period labelled the "Years of Lead" in Morocco, spanning from the 1960s to the early 1990s, the regime of King Hassan II engaged in widespread and severe

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<sup>485</sup> CEDAW, 1979, (U.N.W.) available at <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

<sup>486</sup> Heather Barr, *The Taliban and the Global Backlash Against Women's Rights*, (6 Feb. 2024) Georgetown Journal of International Affairs, available at <https://www.hrw.org/news/2024/02/06/taliban-and-global-backlash-against-womens-rights>.

<sup>487</sup> FES Asia, *Afghan peace process* (2 Jul. 2020) available at <https://asia.fes.de/news/human-rights-in-the-afghan-peace-process>

political repression and systematic human rights abuses, including arbitrary arrests, torture, enforced disappearances, and extrajudicial killings of dissidents and certain minority groups.<sup>488</sup> Opposition parties were banned, civil liberties were restricted, and independent voices were silenced. The regime's authoritarian policies exacerbated social and economic inequalities, leading to widespread poverty and marginalization, particularly in rural areas and urban slums. Following decades of crushing civilian protests with violence and overcoming several coup attempts, King Hassan II ultimately began to relent in such heavy-handed tactics only in the 1990s largely to avoid further international opprobrium, but the Years of Lead only ended entirely when King Hassan II more open-minded son, Mohammed VI, ascended to the throne in 1999.

### Transitional Justice Efforts

In response to the legacy of these abuses, Morocco initiated transitional justice efforts, most notably through the establishment of the Equity and Reconciliation Commission (the "ERC") in 2004.<sup>489</sup> The ERC was tasked with investigating human rights violations committed between 1956 and 1999, with a focus on the Years of Lead. It conducted extensive truth-seeking efforts, documenting testimonies from victims of state violence, torture, and enforced disappearances. The ECR recommended reparations measures for victims, including financial compensation, healthcare access, and symbolic gestures of acknowledgment. Additionally, it proposed institutional reforms to strengthen human rights protections and promote accountability. Despite challenges, Morocco's transitional justice process represents a significant step towards acknowledging past abuses, fostering reconciliation, and building a more rights-respecting society.

Moroccan women actively participated in the transitional justice process, contributing to truth-seeking and reconciliation efforts and advocating for gender-sensitive justice, among other things. Their involvement was multi-faceted, spanning various roles within civil society, human rights organizations, and grassroots movements. The experiences of Moroccan women in transitional justice offer invaluable insights for Iranian women seeking to actively participate in reshaping their country's future. Drawing parallels between the two contexts, we explore how the lessons learned from Morocco's transitional justice process can inform and inspire Iranian women in the aftermath of significant political transformation.

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<sup>488</sup> International Center for Transitional Justice Foundation for the Future, *Morocco: Gender and the Transitional Justice Process* (Sep. 2012) available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf](https://www.ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf).

<sup>489</sup> International Center for Transitional Justice Foundation for the Future, *Morocco: Gender and the Transitional Justice Process* (Sep. 2012) available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf](https://www.ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf).

The courageous testimonies of Moroccan women were instrumental in shedding light on gender-specific abuses.<sup>490</sup> In its final report, for instance, the ERC highlighted that it had sought to listen to and consider the oral testimonies of the greatest possible number of women, through holding individual, group and public hearings with those most poignantly affected by the oppression and violence of the state.

Women in Morocco actively campaigned for gender-sensitive policies within the transitional justice framework. When determining which individuals deserved a portion of the millions of dollars in reparations, for instance, the efforts of the many women who gave testimonies and worked with the ERC helped to ensure that the organization and, ultimately, the government adopted an expansive view of what constituted victimhood. Although the detained, tortured, killed and disappeared were more likely to be men than women, the ERC recognized the often tremendous suffering of mothers, wives, daughters and other women whose lives may have been dramatically worsened by the losses of sons, husbands, fathers, or others upon whom they reasonably depended. In addition to losing the support of a breadwinner, women often had to devote additional resources of whatever they could earn afterward to help support a loved one in prison. The ERC rightfully sought to provide redress for such grievances.

Although only one woman served among the seventeen members of the ERC, Moroccan women did actively participate in preparing the findings of this organization, often through dedicated women's organizations that predated the reconciliation process. Given the long history of prominent women's organizations in the country (which often focused on reforms of family law, among other things), the ERC sought to ensure a just representation for women and respect for the unique suffering faced by women by organizing meetings with women's associations, coordinating with them to articulate the experience and suffering of women and drafting recommendations for reparation for injuries incurred by them.

Moroccan women engaged in cultural reclamation initiatives and educational programs to challenge patriarchal norms. The women's organizations that helped the ERC make its decisions advocated for, among other things, distributions of reparations to survivors of victims in a manner that would treat men and women more equally than Islamic law would prescribe. This led to monetary reparations being split as follows: 40% for the spouse, 10% for parents, and 40% for descendants, in each case, regardless of sex.

Community-based healing and reconciliation initiatives were undertaken by Moroccan women, one key aspect of these initiatives was the establishment of support groups and

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<sup>490</sup> International Center for Transitional Justice Foundation for the Future, *Morocco: Gender and the Transitional Justice Process* (Sep. 2012) available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ictj.org/sites/default/files/ICTJ-Morocco-Gender-Transitional%20Justice-2011-English.pdf>.

counseling services for survivors of human rights abuses, particularly women who had experienced gender-based violence and trauma. These support groups provided a safe space for survivors to share their experiences, express their emotions, and receive psychosocial support from peers and trained counselors. By fostering a sense of solidarity and understanding among survivors, these initiatives helped individuals cope with the psychological effects of trauma and break the silence surrounding their experiences. Likewise, women-led cultural events and artistic expressions also played a significant role in community healing and reconciliation. Through poetry, music, theater, and visual arts, women artists and activists sought to amplify the voices of survivors, commemorate the memory of those who were lost, and challenge societal norms that perpetuated violence and discrimination. These cultural initiatives provided a platform for survivors to reclaim their narratives, assert their dignity and resilience, and contribute to the collective process of truth-telling and memory-building.

### *Considerations for Women's Advancement of Transitional Justice in Iran*

Ultimately, the experience of modern women in Iran, including the women who marched for the advancement of women's roles in Iran during the Iranian Revolution provide a reliable indication of women's interest in advancing women's roles in modern-day Iran. Women have driven calls for change in Iran. International practice teaches us that women's contribution to transitional processes lead to more sustained peace. Combining these factors, it is evident that women's roles must be considered and advanced in a meaningful way in transitional justice processes.

The case studies discussed above provide insight into what paths women may take to advance their rights in a transitional justice process. Women in Iran have historically used some of the methods addressed above, such as advocating for women's access to education, but may benefit further by adopting some of the methods used by other women as discussed in the case studies. Application of the specific methods from the case studies, such as creating women's groups, advocating for specific legislation, and the use of social media in Iran may aid the representation of women in any future transitional justice process.

The following provides an overview of key issues and considerations that shall be taken into consideration in designing a transitional justice process and activities where women can actively participate and contribute to the transition:

- Undertake advocacy efforts:
  - Advocate for women's access to education;
  - Create women's groups;

- Advocate for specific legislation;
- Utilize social media for advocacy.
- Ensure that women actively participate in political processes:
  - Develop and strengthen existing women's organizations and networks. Iranian women at the helm of such organizations will have a stronger position from which to advocate for representation and influence in the decisions of any future reconciliation committee or other body dedicated to achieving transitional justice;
  - Advocate for representation and influence in future reconciliation committees or transitional justice bodies;
  - Emphasize the importance of a gender perspective from the outset of any transition process. Aim to improve upon the results in Morocco and ensure greater representation at the highest levels of any transitional justice body.
- Initiate institutional reform to overcome limitations on women:
  - A report published by the parliamentary research center states that seventy percent of Iranian women do not abide by the hijab requirements.<sup>491</sup> However, women have died at the hands of the morality police for not abiding by such requirements. Consideration should be given to reform the penal code to remove punishments for not wearing a hijab. Such an amendment would be symbolic for rewriting the social norms and laws that govern the daily life of Iranian women;
  - Lift the constitutional ban on women;
  - Advocate for limiting the tenure of currently the supreme leader or any other similar role to allow for diverse viewpoints. If the position of supreme leader was not a lifetime position, this may allow for new ideas and viewpoints to be represented.
- Initiate community-based healing and reconciliation and education initiatives:
  - Organize support groups, cultural events, and educational programs. Both prior to and during any material political transformation, educational programs aimed at promoting gender equality and challenging traditional norms can play a crucial role in fostering a more supportive environment for women's rights;
  - Rebuild trust and solidarity within communities;
  - Promote gender equality and challenge traditional norms through educational programs;
  - Iranian women can consider organizing support groups, cultural events, and educational programs to address the psychological and social impact of years of oppression. These grassroots efforts can contribute to rebuilding trust and solidarity within Iranian communities. The community-based healing and

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<sup>491</sup> Iranwire, *Official Report: Support for Compulsory Hijab Plummet* (30 Jul. 2018) available at <https://iranwire.com/en/features/65433/>.

reconciliation initiatives undertaken by Moroccan women could serve as a blueprint for Iranian women.

- Advocate for inclusive policies:
  - Ensure transitional justice processes consider the harm caused to female family members of male victims.
  - Amplify women's voices through extensive testimonies.
  - Document law and human rights violations to create a path for acknowledgment of women's rights.
  - Afghanistan established a transitional justice unit, whose main areas of focus were documentation of women's past abuses and consultation with the public to identify the preferred measure of accountability. Because of the Commission's resources, it is better able to monitor human rights abuses, which leads to greater accountability for human rights abuses. It is especially important in times of transitional justice that women participate in the political process. Here, because women served as Commissioners, they were able to counsel the Afghanistan government whilst they were drafting a new constitution and developing new laws and regulations.
- Consider transitional justice activities and programs that consider intersectional activism:
  - Recognize and address the diverse experiences of women within the community;
  - Consider intersecting factors such as class, ethnicity, and regional differences in the pursuit of justice;
  - Moroccan women emphasized intersectionality in their transitional justice efforts. Iranian women can learn from this approach and recognize the diverse experiences within their own communities. Intersectional activism will help address the unique challenges faced by different groups of women, ensuring that the pursuit of justice is inclusive and considers the intersecting factors of class, ethnicity, and regional differences.
- Ensure women's engagement in truth-telling:
  - Share narratives of resilience and resistance to challenge historical silencing of women's voices. By sharing narratives of resilience and resistance, women can challenge the historical silencing of women's voices and ensure that their perspectives shape the collective understanding of the country's past.
  - Ensure women's perspectives shape the collective understanding of the country's past.
  - The Tunisian Truth and Dignity Commission (TDC) adopted a gender-sensitive approach to its work, recognizing the unique experiences and vulnerabilities of women in conflict and post-conflict settings. Women played integral roles in the TDC, contributing to its efforts to document human rights abuses, promote accountability, and advance gender equality and justice for all victims. Their

participation and advocacy helped ensure that women's voices and experiences were central to the transitional justice process and the broader efforts to address Tunisia's history of repression and conflict

- Promote the use of social media to overcome gender limitations:
  - Leverage social media platforms to spread information about the regime and garner international support. Younger generations of Iranian women have turned to social media to help spread information about the Iranian regime and draw worldwide attention and international support.
  - Use video platforms like Instagram, WhatsApp, Telegram, and YouTube to show protests and daily resistance. Iranian women have specifically been using video platforms to spread information internationally, such as TikTok and YouTube. Recently, women began showing videos of protests around Iran and videos of them walking around public spaces without hijabs.
  - Highlight the actions of the morality police to draw global attention to women's treatment in Iran. Recently, women began showing videos of protests around Iran and videos of them walking around public spaces without hijabs. Videos of the morality police responding to women at protests have drawn attention to the poor treatment of women in Iran by the morality police.
  - In Sudan, the use of social media was pivotal in providing women with safe spaces to freely discuss their thoughts and in mobilizing the revolution.
- Take international examples into consideration:
  - Learn from Morocco's community-based healing and reconciliation initiatives.
  - Study Afghanistan's efforts with CEDAW and the role of women in drafting the new constitution.
  - Observe Tunisia's gender-sensitive approach in the Truth and Dignity Commission (TDC).
- Rely on previous efforts and initiate new efforts of human rights documentation and monitoring:
  - As seen with CEDAW, doctrinal protections are only as strong as the governments willing to support them; even with the proper infrastructure in place, without the backing of governmental actors, these tools are less effective. As an example, doctrinal protection with respect to women's rights have not been enforced following the return of the Taliban. Prior to the return of the Taliban, support from governments outside of Afghanistan provided pressure on government actors to support the infrastructure that was in place, however, external pressure only works where the government is receptive, and the pressure can trigger a backlash. This becomes more difficult in the context of a government ruled by the Taliban. A potential path to strengthening these protections is through the documentation of law and human rights' violations. Many women believe that



documentation of past abuses and rights violations are key to creating a path to acknowledgement of women's rights.

- Similar to the women in Afghanistan, establishing commissions or other institutions, such as the Independent Human Rights Commission would help combine resources and provide safe spaces for women to share ideas and seek justice.
- Combine resources to monitor and document human rights abuses effectively.
- Advocate for women's participation in these bodies to influence new laws and regulations.

## Environment and Transitional Justice

Another pressing transitional justice issue is how the new transitional justice government should deal with the environmental policy of the current regime. Environmental challenges in Iran are characterized by water scarcity, climate change, air and water pollution, deforestation, and deteriorating biodiversity. These are issues which are continually exacerbated by increasing populations, industrial and agricultural production, war, sanctions, inefficient water and natural resource use, and a lack of enforcement of existing environmental regulations, including non-compliant nuclear waste disposal, illegal deforestation and illegal housing development.<sup>492</sup> Living conditions in Iran's major cities are increasingly challenged by air pollution, wind-blown dust, and carbon emissions, all of which contribute to air pollution. Government data indicates that the air quality in Tehran is increasingly deteriorating.<sup>493</sup> Meanwhile Lake Urmia, located in northwest Iran, a once thriving wetland that supported a wide range of plant and animal species is deteriorating. In spite of the lake's UNESCO biosphere reserve status and the fact it provided an important ecosystem services to the local population,<sup>494</sup> in recent decades, the lake has experienced severe ecological degradation due to factors such as over-extraction of water for irrigation, reduction in rainfall, and the construction of dams.

The government of Iran has made some attempts in recent years to address these environmental issues, including in the development of an Environmental Charter that aims to ensure the protection of the country's natural resources and biodiversity. This Charter includes provisions for reducing pollution, conserving wildlife, and promoting sustainable development. Policies include those developed to mitigate the effects of industrialization, such as restrictions on the use of hazardous chemicals, investment in renewable energy sources, and the creation of protected areas for wildlife. Nonetheless, general policies on the environment in Iran have purportedly not met their stated goals. The country is still behind schedule, with only 47% of the policies implemented so far.<sup>495</sup> Iran is facing critical underground water resources, drought, and sand and dust storms. Despite efforts and €370 million spent to combat sand and dust storms, the annual credit for these efforts is declining as conditions improve.<sup>496</sup> A transitional

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<sup>492</sup> Morad Tahbaz, *Environmental Challenges in Today's Iran*, (Dec. 07, 2016) *Iranian Studies*, 49:6, 943-961, available at <https://doi.org/10.1080/00210862.2016.1241624>

<sup>493</sup> Mazier Motamedi, *Cities across Iran engulfed in thick layers of dust, pollutants*, Aljazeera, Apr. 9, 2022 available at

<https://www.aljazeera.com/news/2022/4/9/irans-capital-tehran-enveloped-by-pollutants-due-to-strong-wind>

<sup>494</sup> Alireza Asem, Amin Eimanifar, Morteza Djamali, Patricio De los Rios and Michael Wink, *Biodiversity of the Hypersaline Urmia Lake National Park (NW Iran)*, *Diversity* 6, no. 1: 102-132 (Feb. 10 2014) available at <https://www.mdpi.com/1424-2818/6/1/102>

<sup>495</sup> MEHR News Agency, *Iranian MP & activists unveil environmental charter* Jun. 14, 2021 available at <https://en.mehrnews.com/news/174797/Iranian-MP-activists-unveil-environmental-charter>

<sup>496</sup> Mehdi Garshasbi, *Environmental policies need much more attention* Sep. 12, 2022 available at <https://www.tehrantimes.com/news/476672/Environmental-policies-need-much-more-attention>

government would need to immediately focus on avoiding further environmental destruction and making sure that environmental protection and environmental justice will be considered as a major institutional right for future governance.

Transitions, whether political, economic, or social, often result in increased pressure on natural resources, increased pollution, and a decline in environmental quality, evidenced in both South Africa and Iraq transitional contexts. During periods of transition, the transitional government should prioritize addressing the harms caused by environmental damage by implementing policies and regulations that promote sustainability and protect the environment. This can include promoting the use of renewable energy sources, sustainable development, protecting critical ecosystems, and ensuring that corporations and individuals who cause environmental harm are held accountable. The transitional government could also consider facilitating compensation and reparations for communities and individuals who have suffered from environmental harm by establishing the mechanisms to do so. By taking measures to address environmental harm during periods of transitional justice, the transitional government can help to mitigate the harm that can stem from transition.

Environmental damage can result in economic, social, and cultural marginalization of communities and individuals. Degradation of natural resources and ecosystems can lead to the loss of livelihoods and employment opportunities, particularly for those who depend on them for their subsistence, such as small-scale farmers and fishers. The displacement of communities due to environmental disasters or resource extraction can result in the loss of cultural heritage, traditions, and knowledge.<sup>497</sup> Moreover, people that are already marginalized, such as women, indigenous peoples, and low-income communities, are often disproportionately affected by environmental degradation, exacerbating their marginalization and perpetuating cycles of poverty. Environmental harm also leads to poor health outcomes and increased health disparities for affected communities, further compounding their economic and social marginalization.

Civil society groups and grassroots movements are often well positioned to raise public awareness and push for policy change by advocating for the rights of those who have been marginalized and by demanding accountability for those who have caused environmental harm. In some cases, civil society organizations may also provide support to communities that have been impacted by environmental damage, including legal assistance and capacity building. Groups can work to build cross-cultural and cross-regional alliances and networks to further their cause and to create a strong, unified voice that can effectively challenge those in power. Through activism and advocacy, civil society and grassroots movements can play a critical role

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<sup>497</sup> Nasser Karami, *The grapes of Khuzestan's wrath* Jul. 30, 2021 Atlantic Council available at <https://www.atlanticcouncil.org/blogs/iransource/the-grapes-of-khuzestans-wrath/>

in ensuring that environmental harm is addressed and prevented during periods of transitional justice.

For example, in Ecuador, an indigenous guard, set up by the A'i Cofan in Sinangoe, is taking advantage of court rulings giving them more control over their land, and they recently celebrated a victory when Ecuador's constitutional court ratified a ruling that suspended 52 gold mining concessions granted on their land without proper consultation.<sup>498</sup>

### *The Intersectionality of Environmental Justice and Transitional Justice*

Individuals, communities or even whole nations are subjected to harm or suffering as a result of the degradation of their environment. Such environmental degradation can have significant impacts on the health, livelihoods, and well-being of individuals and communities, leading to various human rights violations, including the right to life, the right to health, the right to a safe and healthy environment, the right to food and water, and the right to an adequate standard of living. The failure of governments to prevent environmental harm and protect their citizens from its impacts can also be considered a violation of their obligation to fulfill human rights. It is increasingly being recognized that environmental protection is an essential component of human rights protection and that addressing environmental harm must be a priority in promoting and upholding human rights. In a recent UN General Assembly resolution Iran was among very few (eight (8)) countries that abstained from voting in favor of a declaration that everyone on the planet has a right to a healthy environment.<sup>499</sup>

A framework for environmental transition can be understood through the paradigm of three key principles of 'just transition' identified in the literature on environmental justice; they are restorative justice, procedural justice, and distributive justice.<sup>500</sup>

Restorative justice underscores the necessity of focusing on repairing the harm caused to the natural environment and restoring its ecological balance. In cases of environmental harm, restorative justice seeks to hold the responsible parties accountable for their actions and to

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<sup>498</sup> Anastasia Moloney, In Ecuador's Amazon, indigenous forest defense gains legal ground (Jun. 21, 2022) Thomson Reuters Foundation available at

<https://www.context.news/nature/long-read/in-ecuadors-amazon-indigenous-forest-defense-gains-legal-ground>

<sup>499</sup> Iran International, *Iran Abstained From UN Vote To Declare Clean Environment As Human Right* Jul. 30, 2022 available at <https://www.iranintl.com/en/202207302195>

<sup>500</sup> Ben Cahill, Sarah Ladislav, and Mary Margaret Allen, Centre for Strategic and International Studies, *Initiative Just Transition Concepts and Relevance for Climate Action: A Preliminary Framework* (Jun. 26, 2020) Centre for Strategic and International Studies, available at

[https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200626\\_JustTransition\\_layout\\_v8.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200626_JustTransition_layout_v8.pdf)

engage them in the process of restoring the damaged ecosystem. This could involve practices such as restoring habitats, planting trees, removing pollutants, and paying compensation to affected communities. The goal of restorative justice in environmental cases is to repair the harm caused to the environment, to restore the balance of nature, and to create a sense of accountability and responsibility among those who cause environmental harm. Restorative justice has been shown to be effective due to the emotional engagement of the parties involved, as observed through the micro-interactions that occur during restorative justice processes.<sup>501</sup> By involving the responsible parties in the restoration process, restorative justice can help to foster a sense of connection and stewardship towards the environment and encourage sustainable behavior in the future. Restorative processes can lead to action plans or restorative contracts which contain a range of commitments to prevent or repair damaged ecosystems, as in South Africa.

Procedural justice implies meaningful participation, including that of uniquely vulnerable populations or marginalized groups. Meaningful participation requires involvement that affords some degree of engagement in the decision-making process. This could range from consultations through effective social dialogue to participation in formal negotiations.

Distributive justice indicates it is crucial that the outcomes of the transition, both the potential dangers and advantages, be distributed equitably while taking into account differences based on gender, race, and social class. The communities and workers who are affected by the change should not be shouldered with the entirety of its impact, and instead, those who have caused the issue should bear the cost of adapting.

### *Comparative State Practice on Environmental Justice*

In determining best practices for how an Iranian transitional government will implement this paradigm of environmental justice, comparative state practice can provide valuable insight. Embedding environmental justice into transitional justice is a novel and sometimes fraught endeavor, but it is imperative in consideration of Iran's dire environmental situation that a transitional government explore the options available for addressing restorative environmental justice, including by comparing and contrasting the approaches and experiences of different states in periods of transition.

- South Africa

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<sup>501</sup> Rossner, M. *Just Emotions: Rituals of Restorative Justice*, (2013) Oxford: Oxford University Press.

The apartheid period in South Africa, starting from 1948 when the National Party gained control, led to the country's isolation from the international community. This had major implications for the advancement of environmental management in South Africa, as it was left out of global environmental efforts and was unable to keep pace with evolving international and national environmental regulations. Meanwhile, the apartheid regime had a significant effect on the environment, both in the homelands and black townships surrounding white communities.

The April 1994 elections brought an end to the apartheid-era in South Africa, prior to the ANC's (African National Congress) election and victory, they had shown great sensitivity towards environmental issues in their policy documents issued between 1990 and 1994. The ANC government continued with a fragmented approach to environmental management, even further fragmented by assigning it to local and provincial governments. Despite this, there were many successful initiatives that ensured that 88 per cent of households in South Africa now have access to clean water and 82 percent access to sanitation.<sup>502</sup>

The ANC government has struggled to come to terms with the environmental legacy of the apartheid era and on the whole, the transition did not bring significant changes in environmental policies and management. The most significant difference between the two regimes is the massive regeneration projects launched in black and coloured communities, improving their natural and human environments.

However, in 2022, environmental policy is continuing to develop in South Africa. The presidential cabinet recently adopted a 'just transition' framework which sets a vision for a zero-carbon, equitable economy and outlines policies and principles to achieve this. The framework will be important in guiding the implementation of the Just Energy Transition Partnership (JET-P) announced at COP26, where five developed countries promised to provide \$8.5 billion to support a just transition in South Africa. The JET-P focuses on increasing renewable energy and existing coal, while promoting innovation in electric vehicles and green hydrogen.

- Canada

In Canada, in certain instances, the government of Canada has a duty to consult indigenous and accommodate indigenous groups before undertaking conduct that might adversely impact potential legal rights that they are entitled to by law.<sup>503</sup> This duty is prescribed to the government of Canada to protect the existing Aboriginal and Treaty rights of the

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<sup>502</sup> General Household Survey, 2019, <https://www.statssa.gov.za/?p=13908> (South Africa)

<sup>503</sup> Government of Canada and the duty to Consult, Government of Canada, (Dec. 9, 2021), *available at* <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>.

indigenous peoples. The duty to consult is typically evoked in regulatory project approvals (e.g., whether a certain pipeline can flow through an area), licensing and authorization of permits (e.g., whether a mining permit should be given), and other governmental decisions relating to a land use project that may impact an indigenous person's existing right to use or own the land.<sup>504</sup>

The duty to consult mechanism may help to inform or design a process to protect the rights of certain minorities to a specific land or region, in its entirety or for a specific use. For example, it may be used to recognize specific fishing rights in lakes, hunting rights on grounds, or limit unfettered development on land that is properly owned by that group. While a duty to consult may have an overlapping benefit of furthering environmental interests, they are not a substitute for environmental protections.

- Colombia

Colombia has been working towards reparations for environmental damage caused by five decades of armed conflict.<sup>505</sup> The country has suffered from deforestation, illegal mining, oil spills, and other environmental crimes, leading to extensive damage to ecosystems and loss of biodiversity.<sup>506</sup>

In 2016, the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) signed a peace agreement that included provisions for addressing the environmental damage caused by the conflict.<sup>507</sup> In the agreement, a commitment to sustainable development was outlined. The agreement also included a special chapter on environmental issues for the establishment of a commission to evaluate and make recommendations for reparations for environmental damage.

The Subunit for Attention and Integral Reparation for Environmental and Territorial Victims (Subunidad para la Atención y Reparación Integral a Víctimas Ambientales y Territoriales), will likely take time to implement its mandate, however, Colombia has a

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<sup>504</sup> Government of Canada and the duty to Consult, Government of Canada, (Dec. 9, 2021), *available at* <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>.

<sup>505</sup> María Alejandra Rodríguez-Zapata, César Augusto Ruiz-Agudelo *Environmental liabilities in Colombia: A critical review of current status and challenges for a megadiverse country* (2021), *available at* <https://www.sciencedirect.com/science/article/pii/S2667010021003516>

<sup>506</sup> Report 29 International Crisis Group, A Broken Canopy: Deforestation and Conflict in Colombia, (Nov. 4, 2021) *available at* <https://www.crisisgroup.org/latin-america-caribbean/andes/colombia/091-broken-canopy-deforestation-and-conflict-colombia>

<sup>507</sup> National Government of Colombia FARC-EP, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (Nov. 24, 2016), *available at* <https://www.peaceagreements.org/wview/1845/Final%20Agreement%20to%20End%20the%20Armed%20Conflict%20and%20Build%20a%20Stable%20and%20Lasting%20Peace>.

comprehensive compensation program, which as of December 2016, has awarded nearly USD 25.1 million, mostly from public funds. That amount was allocated to little over 4,000 victims of the 6,884 individuals recognised by rulings of the Special Jurisdiction of Peace.<sup>508</sup>

The Colombian government has also taken other steps to address environmental damage. For example, in 2019, the government announced a plan to plant 180 million trees by 2022 to restore forests that have been lost due to deforestation.<sup>509</sup>

However, some critics argue that more needs to be done to address environmental damage in Colombia.<sup>510</sup> The Inter-American Commission on Human Rights, for example, argues that the government has not done enough to hold companies and individuals accountable for environmental crimes, and that there is a need for more comprehensive and transparent monitoring and enforcement of environmental regulations.<sup>511</sup> Additionally, they argue that the government should do more to protect the rights of indigenous and Afro-Colombian communities, who have been disproportionately affected by environmental damage.

- Iraq

In some contexts environmental damage worsens during transition in spite of efforts to address it. In Iraq, the 1980-1988 Iran-Iraq War resulted in widespread environmental destruction and pollution from oil spills, industrial activities, and the use of chemical weapons.<sup>512</sup> The 1990-1991 Gulf War led to further environmental damage due to the burning of oil wells, the intentional drying of marshlands and the release of pollutants into the air and water. Finally, the 2003 invasion and subsequent conflict caused significant damage to Iraq's infrastructure and environment, including the destruction of water treatment facilities, sewage systems, and other essential services.<sup>513</sup>

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<sup>508</sup> Reparations in Colombia: Where to? Mapping the Colombian Landscape of Reparations for Victims of the International Armed Conflict (Feb. 2019) *available at* <https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf>.

<sup>509</sup> Antonio José Paz Cardona translated by Romina Castagnino, *Colombia wants to plant 180 million trees: Is it a realistic goal?* (Apr. 23, 2020) *available at* <https://news.mongabay.com/2020/04/colombia-wants-to-plant-180-million-trees-is-it-a-realistic-goal/>

<sup>510</sup> Human Rights Watch Colombia Events of 2021 <https://www.hrw.org/world-report/2022/country-chapters/colombia#254c99>

<sup>511</sup> Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities in the Americas* (2015) *available at* <http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf>

<sup>512</sup> International Red Cross and Red Crescent, *Iraq's perfect storm – a climate and environmental crisis amid the scars of war* *available at* <https://www.icrc.org/en/document/iraqs-perfect-storm-climate-and-environmental-crisis-amid-scars-war>

<sup>513</sup> International Red Cross and Red Crescent, *Iraq bulletin Operational Update* (Apr. 19, 2003) *available at* <https://www.icrc.org/en/doc/resources/documents/update/5lrmzz.htm>



The Iraqi government has implemented programs to restore wetlands<sup>514</sup> and protect endangered species, while also working with international organizations to implement environmental regulations and policies.<sup>515</sup> Efforts have been made to reduce the impact of sand storms by implementing measures such as planting trees and reducing soil erosion. In spite of these measures, temperatures in Iraq have risen by at least 0.7 degrees and more frequent sandstorms are having a significant impact on the health and wellbeing of Iraqi citizens (and citizens of neighboring countries), causing respiratory problems and other health issues.<sup>516</sup>

- United States

Interestingly, in 1980, the United States initiated a Superfund program, a federal environmental remediation program established by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to respond to releases or threatened releases of hazardous substances into the environment.

### *Key Environmental Factors to Consider in Transition*

Addressing environmental issues endemic in Iran is an incredibly complex task for a transitional government which requires a comprehensive and integrated approach. The key environmental issues outlined are by no means exhaustive and do not cover all environmental concerns in Iran. However, they do outline a starting place for a transitional government to address the key issues identified in the literature and include some specific examples of current high-profile environmental issues in Iran: drought; air pollution; climate change; deteriorating biodiversity - e.g. deforestation, Lake Urmia; and lack of enforcement of existing environmental regulations - e.g. illegal housing development and enforcing compliant nuclear waste disposal.

#### Drought

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<sup>514</sup> United Nations Environment Program, Press Release: Restoring Iraqi Marshlands Project *available at* <https://press.un.org/en/2004/ik449.doc.htm>

<sup>515</sup> Iraq's National Biodiversity Strategy and Action (2015-2020) *available at* <https://www.cbd.int/doc/world/iq/iq-nbsap-01-en.pdf>

<sup>516</sup> International Red Cross and Red Crescent, Iraq's perfect storm – a climate and environmental crisis amid the scars of war *available at* <https://www.icrc.org/en/document/iraqs-perfect-storm-climate-and-environmental-crisis-amid-scars-war>

Iran has insufficient water resources and aquifers are being drained.<sup>517</sup> This is due to decreasing precipitation and an evaporation rate above the global norm and has been exacerbated by illegal well-drilling, aggressive irrigation practices, and short-term water management policies which have resulted in lakes and rivers withering and dying across the country.<sup>518</sup> Domestic water use in Iran is 70 % higher than the global average and “unplanned and illiterate use of water in agriculture” is prevalent.<sup>519</sup> The lack of water resources places enormous pressure on the population, forcing migration<sup>520</sup> causing populations to move into shanty towns and small settlements, which has knock-on negative effects on social order, health, and agriculture of those regions.<sup>521</sup>

The transitional government should establish a clear plan for managing water resources during drought periods, and strategies for minimizing the social, economic, and environmental impacts of drought. Water conservation and efficiency measures can play an important role in mitigating the effects of drought.<sup>522</sup>

### Air Pollution

The Department of the Environment<sup>523</sup> is primarily responsible for formulating and implementing environmental action plans aimed at managing and reducing air pollution in Iran. The establishment of a national air pollution surveillance network, promulgation of national industrial emission standards, control of mobile air pollution sources, and the establishment of ambient air quality standards,<sup>524</sup> constitute some of the attempts of the Department's air pollution

<sup>517</sup> Samaneh Ashraf, Ali Nazemi & Amir AghaKouchak, *Anthropogenic drought dominates groundwater depletion in Iran*, Scientific Reports (Apr. 28, 2021) available at <https://www.nature.com/articles/s41598-021-88522-y>

<sup>518</sup> Paradise Lost? Developing Solutions to Iran's Environmental Crisis available at <https://smallmedia.org.uk/news/paradise-lost-developing-solutions-to-irans-enviro>

<sup>519</sup> Ali Hajizade, *Water crisis in Iran: Causes, consequences and perspectives*, (Jul. 03, 2018 updated on May. 20, 2020) Alarabiya news, available at <https://english.alarabiya.net/views/news/middle-east/2018/07/03/Water-crisis-in-Iran-Causes-consequences-and-perspectives>

<sup>520</sup> Morad Tahbaz, *Environmental Challenges in Today's Iran*, (Dec. 07, 2016) Iranian Studies, 49:6, 943-961, available at <https://doi.org/10.1080/00210862.2016.1241624>

<sup>521</sup> Brussels International Center, *Iran and Climate Refugees: an Alarming Situation*, May. 22, 2019, available at <https://www.bic-rhr.com/research/iran-and-climate-refugees-alarming-situation>

<sup>522</sup> Masoud Yazdanpanah, Dariush Hayati, Stefan Hochrainer-Stigler, Gholam Hosein Zamani, *Understanding farmers' intention and behavior regarding water conservation in the Middle-East and North Africa: A case study in Iran* (Feb. 8, 2014) Journal of Environmental Management, 135, 63-72, available at <https://doi.org/10.1016/j.jenvman.2014.01.016>.

<sup>523</sup> In July 1975, the National Clean Air Regulations were passed by the Parliament as an addition to the Environmental Protection and Enhancement Act, outlining the role of the Department of the Environment in managing and reducing air pollution.

<sup>524</sup> R. Zerbonia & B. Soraya (1978) Air Pollution Control in Iran, Journal of the Air Pollution Control Association, 28:4, 334-337, DOI: 10.1080/00022470.1978.10470606

control strategies. It is crucial that a transitional government dedicates both financial resources and professional expertise to improving the implementation of strategies like these during transition. Consequently, addressing air pollution will require institutional reform, such as: reforming environmental regulations to prevent future air pollution, increasing the transparency of data and information about air quality, as well as increasing the capacity and effectiveness of governmental agencies responsible for overseeing and enforcing environmental regulations.

Iran International reported that “Iranian government entities have stopped publishing information on fuel use for power generation, but the latest report from the Parliament Research Center in 2020 indicated that the use of mazut had reached 6 billion liters (around 1.6 billion gallons), or 62 percent higher than in 2017.”<sup>525</sup> Mazut is a low-quality fuel which is banned in most countries but in Iran it is used regularly as Iran’s export market is limited. During transition, import of high quality fuel and alternative power sources must be at the forefront of planning.

### Deteriorating Biodiversity

Wind erosion in Iran is furthering the desertification of agricultural land caused by overgrazing,<sup>526</sup> “creating greater production demand on remaining arable areas”<sup>527</sup> and posing a major threat to the biodiversity of Iran. Habitat destruction and fragmentation pose an additional threat to biodiversity. Protected area downgrading, downsizing, and degazettement processes impact the legal status of national parks and other protected areas.<sup>528</sup> A transitional government should work to reform environmental regulations to prevent downgrading of protected areas, as well as increasing the capacity and effectiveness of governmental agencies responsible for overseeing and enforcing national parks and other protected areas. Other factors impacting Iranian biodiversity which a transitional government should consider to address deterioration include ineffective law enforcement and a lack of awareness of the law; inappropriate regulation management and control of poaching, disease and environmental pollution, to name a few.

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<sup>525</sup> Dalga Khatinoglu, *Use Of Dirty Fuels Jumps In Iran Due To Natural Gas Shortage* (Jan. 7, 2022) Iran International available at <https://www.iranintl.com/en/202207016968>

<sup>526</sup> World Bank, *Islamic Republic of Iran Cost Assessment of Environmental Degradation Rural Development, Water and Environment Department Middle East and North Africa Region*, Report No. 32043-IR Jun. 30, 2005 available at <https://documents1.worldbank.org/curated/en/401941468284096627/pdf/320430IR.pdf>

<sup>527</sup> Morad Tahbaz, *Environmental Challenges in Today’s Iran*, (Dec. 07, 2016) *Iranian Studies*, 49:6, 943-961, available at <https://doi.org/10.1080/00210862.2016.1241624>

<sup>528</sup> Tehran Times, *Cadaster to help save national land areas from land grabbers* (Apr. 27, 2018) available at <https://www.tehrantimes.com/news/423036/Cadaster-to-help-save-national-land-areas-from-land-grabbers>

### Deforestation

The Forest, Range and Watershed Organization data indicates that from 1944 to 2000, Iranian forests diminished from 19.5 to 12.4 million hectares.<sup>529</sup> Developers destroy forests to build vacation homes in the north of the country.<sup>530</sup> A lens of restorative justice to transition would support the instigation of programs which involve restoring habitats and planting trees through a comprehensive environmental assessment and subsequent strategy which addressed transparency and accountability. However, a transitional government should also prioritize the enforcement of laws developed to prevent deforestation, the establishment of protected areas, and addressing the underlying drivers of deforestation.

### Degradation of Lake Urmia

The primary causes of the environmental crisis at Lake Urmia are aggressive water resource development projects, unregulated agriculture, human-induced alterations to the ecosystem (dams), and competition among upstream users for access to water.<sup>531</sup> The government's perceived mismanagement of the crisis, despite significant investments in the restoration of the lake, has led to widespread public dissent.

A transitional government should immediately implement a restorative justice plan for Lake Urmia with several steps aimed at restoring the ecological balance of the lake and addressing the harm caused by the degradation, including measures to reduce water withdrawal, promote sustainable use of the lake's resources, and protect the lake's unique ecosystem. Such a restoration plan should involve the meaningful input of local communities, as well as scientists, and experts in the fields of water management and conservation. Meaningful participation can stem from consultations through effective social dialogue with local communities and NGOs to gather their input, and ensure their participation in the restoration process.

Restorative justice highlights practices such as restoring habitats, removing pollutants, and paying compensation to affected communities by those responsible for the degradation of a natural resource like Lake Urmia. The literature indicates that processes which prioritize restoration as a collaborative process between the affected communities and those who should be

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<sup>529</sup> World Bank, *Islamic Republic of Iran Cost Assessment of Environmental Degradation Rural Development, Water and Environment Department Middle East and North Africa Region*, Report No. 32043-IR Jun. 30, 2005 available at <https://documents1.worldbank.org/curated/en/401941468284096627/pdf/320430IR.pdf>

<sup>530</sup> Alex Shams, Iran's Beach-side Boom, (Sep 09, 2016) available at <https://roadsandkingdoms.com/2016/irans-beach-town-boom/>

<sup>531</sup> Kourosh Ziabari, *How Iran's dam-building obsession is killing Middle East's largest lake* Jul. 29, 2022 TRT World available at <https://www.trtworld.com/magazine/how-iran-s-dam-building-obsession-is-killing-middle-east-s-largest-lake-59266>

held accountable for environmental destruction, can be the most effective strategies for restoration and transition. Therefore, the transitional government should consider integrating those who are responsible for the deterioration of the Lake in strategies for its restoration.

Local communities have been directly impacted by the degradation of Lake Urmia, such as those who depend on the lake's fishing industry could receive compensation for their losses, such as providing alternative livelihoods or financial compensation. Finally, promotion of sustainable management of Lake Urmia's resources through education programs and awareness raising can help to preserve the unique ecosystem of the lake and ensure the well-being of local communities for generations to come.

### Lack of Enforcement of Existing Environmental Regulations

There are many aspects to this, briefly covered here are two examples: illegal housing development and non-compliant nuclear waste disposal. There are many other examples such as poaching, land-grabbing in protected zones, and illegal deforestation which are not covered in this document and should also be thoroughly considered by a transitional government.

### Illegal Housing Development

Addressing the issue of illegal housing development in Iran requires institutional reform.<sup>532</sup> This includes reforming land-use planning and zoning laws to prevent future illegal development. It also involves increasing the capacity and effectiveness of governmental agencies responsible for overseeing and enforcing land-use regulations.

In order to prevent illegal housing development from occurring in the future, public participation and awareness is key. This can be done by educating the public about the impacts of illegal development and promoting community participation in the planning and development process. Additionally, encouraging public engagement and transparency in the development process is recommended by the UN development program.<sup>533</sup>

### Non-compliant Nuclear Waste Disposal

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<sup>532</sup> Javan, J., & Seyyedi, S. M. A Brief Survey of Illegal Construction in the Suburbs of Mashhad City (2005) *available at* doi: 10.22067/geography.v3i4.3037

<sup>533</sup> United Nations Development Programme, Mainstreaming the Rule of Law in the Post-2015 Development Agenda (Jun. 13, 2014) *available at* <https://www.ohchr.org/en/statements/2014/06/human-rights-mainstreaming-post-2015-development-agenda>

Effective and safe management of such nuclear waste requires a comprehensive program, coordinated under a defined national waste management strategy.<sup>534</sup> Enforcing compliant nuclear waste disposal practices and remedying the negative impacts of non-compliant practices reported in Iran is crucial for ensuring public health and safety, as well as the protection of the environment. A first step for a transitional government would be to conduct an investigation to determine the extent of non-compliant nuclear waste disposal in central Iran, as well as the individuals and entities responsible for it. Transitional government might consider contracting an international environmental firm to assess the impact of non-compliant nuclear waste disposal and implement solutions immediately.

Mechanisms that might support the provision of justice to those impacted by non-compliant nuclear waste disposal practices could include:

- Immediate cessation of unsafe waste management practices.<sup>535</sup>
- A mechanism for environmental compensation for those who have been negatively affected by nuclear waste, such as individuals who have suffered health problems as a result of exposure to radioactive materials.
- Mechanisms for remediation and restoration which implement new waste disposal technologies and the cleanup of contaminated areas.
- Increasing the capacity and effectiveness of government agencies responsible for overseeing and enforcing nuclear waste disposal regulations. This can involve improving monitoring and reporting systems, as well as increasing the transparency of data and information about nuclear waste.

### *Considerations on the Environment for a Transitional Government*

With regards to the environment, a transitional government will need to address existing environmental challenges along with the environmental policy of the previous government. A transitional government may consider:

- Developing a comprehensive environmental policy: The transitional government can formulate a comprehensive environmental policy that addresses key environmental issues in Iran. This policy should provide a roadmap for environmental protection and sustainability, outlining specific goals, targets, and timelines. This would include revising, updating or rewriting the existing Environmental Charter.

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<sup>534</sup> Ali Malekifarsani, Mohsen Asadian and Saeed Momenzadeh, Radioactive Waste Management Issues and Challenges in Iran, *available at* [https://inis.iaea.org/search/search.aspx?orig\\_q=RN:53084422](https://inis.iaea.org/search/search.aspx?orig_q=RN:53084422)

<sup>535</sup> Ali Malekifarsani, Mohsen Asadian and Saeed Momenzadeh, Radioactive Waste Management Issues and Challenges in Iran, *available at* [https://inis.iaea.org/search/search.aspx?orig\\_q=RN:53084422](https://inis.iaea.org/search/search.aspx?orig_q=RN:53084422)

- Establishing environmental governance structures: Create dedicated governmental bodies or strengthen existing institutions to oversee environmental protection efforts. This may involve establishing an environmental ministry or agency with the authority and resources to enforce environmental regulations effectively.
- Strengthening environmental regulations: The transitional government can review and update existing environmental laws and regulations, ensuring they align with international standards. It can introduce stricter penalties for environmental violations and improve enforcement mechanisms.
  - Including by becoming a signatory to UNGA Resolution A/RES/76/300<sup>536</sup> - The human right to a clean, healthy and sustainable environment.
  - Provide direct support for the trickle-down effect of this Resolution by enshrining the right to a healthy environment in the constitution and creating and implementing those laws which result from considering the right to a clean, healthy and sustainable environment a human right.
- Monitoring and controlling industrial pollution: Strengthening industrial pollution monitoring and control mechanisms is crucial to protecting the environment and public health. The transitional government can establish rigorous emissions standards, enforce regular inspections, and promote the adoption of cleaner production technologies.
- Preserving and restoring ecosystems: Protecting Iran's unique ecosystems, including forests, wetlands, and coastal areas, is crucial for biodiversity conservation. The government can establish protected areas, enforce strict regulations on deforestation and illegal hunting, and invest in habitat restoration projects.
- Promoting renewable energy: Encouraging the development and use of renewable energy sources, such as solar, wind, and geothermal, can help reduce reliance on fossil fuels and mitigate pollution. The government can provide incentives for renewable energy projects, promote research and development, and facilitate the integration of renewable energy into the national grid.
- Investing in green infrastructure: Developing green infrastructure, such as sustainable transportation systems, energy-efficient buildings, and urban green spaces, can contribute to a cleaner and more sustainable environment. The government can invest in the construction of bike lanes, promote electric vehicles, and encourage green building practices.
- Existing environmental challenges in Iran, including drought, air pollution, deforestation, climate change, and deteriorating biodiversity.
- Balancing the environmental agenda along with the economic interests of the country. This may include a consideration of:

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<sup>536</sup> UNGA Resolution A/RES/76/300 on the human right to a clean, healthy and sustainable environment, *available at* <https://digitallibrary.un.org/record/3982508?ln=en>.

- How the lifting of sanctions may promote the development of certain industries (e.g., petroleum), which may in turn damage the environment without careful regulation;
- How the lifting of sanctions may promote the development of certain industries (e.g., renewable energy), which may in turn advance environmental goals; and
- How potential agenda items of a transition government (e.g., supporting agricultural investment) may align with environmental goals to rehabilitate and restore environments.
- Balancing the environmental agenda along with social goals of the transitional government, including through the prioritization of certain disadvantaged groups that have faced the brunt of environmental damage (e.g., low-income groups, or cultural minorities).
- Considering the environmental agenda in Iran's approach to foreign relations, including its approach to United Nations resolutions concerning the environment and existing international environmental agreements.
- Enhancing waste management: Developing effective waste management systems can prevent pollution and environmental degradation. The transitional government can promote recycling initiatives, implement waste separation programs, encourage composting, and invest in waste treatment facilities.
- Supporting sustainable agriculture: Implementing policies that promote sustainable agricultural practices can minimize soil degradation, reduce water pollution from chemical fertilizers and pesticides, and protect biodiversity. The transitional government can provide incentives for organic farming, support agricultural education programs, and promote efficient irrigation techniques.
- Conducting an audit of the existing environmental damage to Iran, including:
  - Lack of enforcement of existing environmental regulations;
  - Non-compliant nuclear waste disposal; and
  - Damage to wetlands (e.g., Lake Urmia).
- Fostering research and innovation: Supporting scientific research and technological innovation can drive sustainable development and environmental protection. The government can provide grants and funding for environmental research, facilitate collaboration between academia and industry, and promote the development of green technologies.
- Establishing an environmental compensation commission that does not only aim to pay compensation to those affected by climate disasters but also actively takes steps to protect the environment.
- Initiate a superfund-like program to advance environmental justice by addressing historical environmental harms, promoting equity, and ensuring sustainable development. This approach would require robust legal frameworks, adequate resources, and



meaningful community engagement to be effective. An example of a superfund program is the United States federal environmental remediation program established by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

- Encourage public awareness and education: Raising public awareness about environmental issues is essential for fostering a culture of environmental responsibility. The government can launch educational campaigns, organize workshops and seminars, and incorporate environmental topics into the school curriculum.
- Strengthening international cooperation: Collaboration with international organizations and neighboring countries can provide valuable expertise, resources, and funding for environmental initiatives. The transitional government can actively participate in international environmental agreements, share best practices, and seek support for addressing transboundary environmental challenges.
- Using environmental restorative processes to establish action plans and contracts that contain a plan to address or prevent damaged ecosystems. This may include apologies, restoration of the environment, prevention of future harm, restoration of other environments, payment of compensation, environmental community service work, environmental audits, training, and education.
- Identifying human resources and skills development to produce a climate-resilient country, including through support to civil society groups and grassroots movements.
- Making effective and sustainable use of resources to assist communities affected by the transition.
- Allowing and promoting public participation in the regeneration of areas that have experienced environmental damage.
- Implementing decisive policies to revive environmental assets damaged over previous years and providing restitution to the public for the deprivation of these assets.

## Security & Armed Forces

The Islamic Republic of Iran has a highly complex and multi-layered structure of security agencies comprising both military and non-military institutions. The Iranian Constitution, specifically Article 110, designates the Supreme Leader, Ayatollah Ali Khamenei, as the commander-in-chief of the armed forces, thereby making him the ultimate authority over all security and defense matters.<sup>537</sup> As part of the transitional justice efforts, such as security sector reform and accountability, affect security and armed forces, it is important to understand the current military apparatus, key actors and challenges to devise a successful program.

### *Military Institutions*

Iran's military, comprising various organizations such as the Iranian Armed Forces (“Artesh”), Islamic Revolutionary Guard Corps (“IRGC”) with the Basji Force, Quds Force, and the IRGC Intelligence Organization under its umbrella, and Law Enforcement Force (“LEF”), plays a pivotal role in the country's politics and society.

#### The Artesh

Established in the 1920s as part of Iran’s modern military force, the *Artesh Shahanshahi* or Imperial Army, is today’s conventional military of Iran. The reason a parallel military branch was established post the 1979 revolution was due to the close affiliation of the Artesh to the previous power of Iran, the Shah Mohammad Reza Pahlavi. As a result of distrust, the newly formed regime of the 1979 Revolution duplicated the institutions that existed prior to the Revolution with similar mandates to ensure loyalty to the Islamic Supreme Leader, and as a result, the IRGC was established as a counterweight to the Artesh. Since then, the Artesh had significant leadership changes and by the end of the revolution, the Artesh had managed to somewhat prove its value and loyalty to the regime.<sup>538</sup>

Today, the Artesh is a multi-branch military force consisting of Islamic Republic of Iran Ground Force, Islamic Republic of Iran Navy, Islamic Republic of Iran Air Force, Islamic Republic of Iran Air Defense Force. These branches are responsible for protecting Iran's borders and supporting the IRGC in its mandate. The Artesh is perceived by the current regime as

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<sup>537</sup> Article 110 (4) of Iran (Islamic Republic of)'s Constitution of 1979 with Amendments through 1989, *available at* [https://www.constituteproject.org/constitution/Iran\\_1989.pdf](https://www.constituteproject.org/constitution/Iran_1989.pdf)

<sup>538</sup> Houchang Hassan-Yari, *The Artesh and Revolution*, THE MIDDLE EAST INSTITUTE, (November 15, 2011), *available at* <https://www.mei.edu/publications/artesh-and-revolution>

“second-class armed forces” in comparison to the IRGC, and both organizations historically have suffered immense tensions between each other, however, the Artesh remains an important component of Iran's security apparatus.<sup>539</sup>

### Islamic Revolutionary Guard Corps (IRGC)

The IRGC was created to maintain and protect, from both internal and external threats, the Revolution's ideological and religious principles by unifying the various militias that emerged during the revolution into a unified and loyal force to the newly formed regime.<sup>540</sup> The IRGC has played a major role as a martial organization since its formation, particularly in the Iran-Iraq war.

The IRGC consists of the IRGC Ground Force, IRGC Navy, IRGC Aerospace Force, and most importantly, the forces leading covert operations and intelligence forces; the Basij Force, the IRGC Quds Force, and the IRGC Intelligence Organization.<sup>541</sup>

- **The Basij Force:** The largest security force by manpower and can be mobilized within short notice anywhere in Iran, the Basij is a paramilitary organization, which is primarily in charge of providing internal security such as riot control and enforcing the regime's religious and political ideologies, particularly over civilians. The Basij consists of civilian volunteers, and they serve as a reserve force of the IRGC.<sup>542</sup>
- **The Quds Force:** The Quds Force is the expeditionary arm of the IRGC and is responsible for foreign military and covert operations. The Quds Force has been affiliated with many armed actors in the Middle East, through arming, funding, and training of proxy militias, including Hezbollah in Lebanon, the Shia insurgents in Iraq, and the Houthis in Yemen. The Quds Forces were Iran's de facto tool in Shia Muslims countries within the region and after the Arab spring, where Iran swept further into the

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<sup>539</sup> Houchang Hassan-Yari, *The Artesh and Revolution*, THE MIDDLE EAST INSTITUTE, (November 15, 2011), available at <https://www.mei.edu/publications/artesh-and-revolution>

<sup>540</sup> The Council on Foreign Relations, *Iran's Revolutionary Guards*, (May 6, 2019), available at <https://www.cfr.org/background/irans-revolutionary-guards>

<sup>541</sup> Udit Banerjea, *Revolutionary Intelligence: The Expanding Intelligence Role of the Iranian Revolutionary Guard Corps*, Vol. 8 JOURNAL OF STRATEGIC SECURITY 93, 95 (2015), available at <https://www.jstor.org/stable/26465296?seq=3>

<sup>542</sup> Udit Banerjea, *Revolutionary Intelligence: The Expanding Intelligence Role of the Iranian Revolutionary Guard Corps*, Vol. 8 JOURNAL OF STRATEGIC SECURITY 93, 96 (2015), available at <https://www.jstor.org/stable/26465296?seq=3>

security vacuums of Syria and Iraq and largely increased its presence within both territories.<sup>543</sup>

The Quds Force was headed by Brigadier General Qassem Suleimani, an influential figure known for his operations and tactics for Iran's regional influence. The Quds Force was designated as a supporter of terrorism in 2007 by the U.S. Treasury Department, and further sanctions were imposed on Quds Force officials in the following years. In 2020, Qassem Suleimani was assassinated by the orders of the then U.S. President Donald Trump as a way to allegedly deter Iran's future attacks after Iran supporters stormed the U.S. Embassy in Baghdad.<sup>544</sup>

- **IRGC Intelligence Organization:** After the 2009 Green Movement (known as the opposition movement), large protests erupted due to the fraudulent June elections. Subsequently, Ayatollah Ali Khamenei's legitimacy was threatened, and Khamenei reformulated the role of what was then called IRGC Intelligence Branch to drastically expand its duties and report directly to his office through a new larger division of intelligence named IRGC Intelligence Organization.

The restructuring of the IRGC's intelligence division resulted in the effective suppression of the opposition movement, as well as achieving increased dominance over Iran's intelligence network compared to the Ministry of Intelligence and Security, whose loyalty to Khamenei had been suspected.<sup>545</sup>

The IRGC is severely distinct from the Artesh or the regular forces as it reports directly to Khamenei's personal office and has authority over all other institutions in the country that emerged after the 1979 Revolution. Thus, the IRGC is the dominant political force in Iran, using its intelligence abilities to control the internet, telecommunications and internal repression mechanism to maintain the agenda and legitimacy of the Supreme Leader. Currently, the IRGC is being faced with further international sanctions due to the violent crackdown on nation-wide protests following the death of 22-year-old Iranian Kurdish woman Mahsa (Jina) Amini in 2022.<sup>546</sup>

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<sup>543</sup> The Council on Foreign Relations, *Iran's Revolutionary Guards*, (May 6, 2019), available at <https://www.cfr.org/background/irans-revolutionary-guards>

<sup>544</sup> Al-Jazeera, *Iran in mourning, vows revenge for Qassem Soleimani's killing*, (January 3, 2020), available at <https://www.aljazeera.com/news/2020/1/3/iran-in-mourning-vows-revenge-for-qassem-soleimanis-killing>

<sup>545</sup> Udit Banerjee, *Revolutionary Intelligence: The Expanding Intelligence Role of the Iranian Revolutionary Guard Corps*, Vol. 8 JOURNAL OF STRATEGIC SECURITY 93, 96-98 (2015), available at <https://www.jstor.org/stable/26465296?seq=3>

<sup>546</sup> Alessandro Bruno, *IRGC Main Player in Iran's Amini Protests*, GEOPOLITICAL MONITOR, (December 13, 2022), available at <https://www.geopoliticalmonitor.com/irgc-main-player-in-irans-amini-protests/>; See also

## The Law Enforcement Forces (LEF) or Niruye Entezâmiye Jomhuriye Eslâmiye Irân (NAJA)

During the Shah era, the police force consisted of two main branches: the urban police (shahrbani) and the rural police (gendarmerie). However, following the 1979 Revolution, the police force was re-established to serve the interests of the Supreme Leader.<sup>547</sup>

The police had undergone institutional reforms by the Supreme Leader which included religious leaders appointed to oversee the duties of the police, and most importantly, creating the disciplinary power of the Islamic Revolutionary Committees, known as the Committee or Komiteh (“committee”). While the police dealt with enforcing order, the Committee was mandated to patrol and exert fundamentalist religious regulations on social behaviors, for example, the Committee would be roaming the streets and ensure that women were covered up in black loose garments known as chadors and pictures of Supreme Leader were displayed widely on the face of supermarkets.<sup>548</sup>

In 1990, Iran’s Parliament passed a law that merged all the security branches of the Committee, shahrbani, gendarmerie, and the judicial police into a centralized modern police force known as Law Enforcement Forces of the Islamic Republic of Iran or NAJA. These efforts subsequently came after the country was undergoing economic reconstitution. To reduce the budget of the government, the administration of President Ali Akbar Hashemi Rafsanjani decided to consolidate the security sector with the armed forces. Therefore, when LEF was operationalized in 1991, its charter stipulated that the NAJA was to be part of the armed forces.<sup>549</sup>

Shortly after the operationalization of NAJA, protests erupted in Iran during high inflation rates, however, NAJA failed to shut down these protests, thus paving the way for the

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Al-Jazeera, *US joins Europe with fresh sanctions over Iran protest crackdown*, (Jan. 23, 2023), available at <https://www.aljazeera.com/news/2023/1/23/us-joins-europe-with-fresh-sanctions-over-iran-protest-crackdown>

<sup>547</sup> Saeid Golkar, *The Evolution of Iran’s Police Forces and Social Control in the Islamic Republic*, No. 120 BRANDEIS UNIVERSITY: CROWN CENTER FOR MIDDLE EAST STUDIES1, 1 (July 2018), available at [https://www.researchgate.net/profile/Saeid-Golkar-2/publication/326449608\\_The\\_Evolution\\_of\\_Iran's\\_Police\\_Force\\_s\\_and\\_Social\\_Control\\_in\\_the\\_Islamic\\_Republic/links/5b4e293aaca27217ff9e94c0/The-Evolution-of-Irans-Police-F-orces-and-Social-Control-in-the-Islamic-Republic.pdf](https://www.researchgate.net/profile/Saeid-Golkar-2/publication/326449608_The_Evolution_of_Iran's_Police_Force_s_and_Social_Control_in_the_Islamic_Republic/links/5b4e293aaca27217ff9e94c0/The-Evolution-of-Irans-Police-F-orces-and-Social-Control-in-the-Islamic-Republic.pdf)

<sup>548</sup> Philip Shenon, *In Iran, a Glimpse of Ankle Can Bring Out the Komiteh*, THE NEW YORK TIMES, (July 16, 1990), available at <https://www.nytimes.com/1990/07/16/world/in-iran-a-glimpse-of-ankle-can-bring-out-the-komiteh.html>

<sup>549</sup> Saeid Golkar, *The Evolution of Iran’s Police Forces and Social Control in the Islamic Republic*, No. 120 BRANDEIS UNIVERSITY: CROWN CENTER FOR MIDDLE EAST STUDIES1, 3 (July 2018), available at [https://www.researchgate.net/profile/Saeid-Golkar-2/publication/326449608\\_The\\_Evolution\\_of\\_Iran's\\_Police\\_Force\\_s\\_and\\_Social\\_Control\\_in\\_the\\_Islamic\\_Republic/links/5b4e293aaca27217ff9e94c0/The-Evolution-of-Irans-Police-F-orces-and-Social-Control-in-the-Islamic-Republic.pdf](https://www.researchgate.net/profile/Saeid-Golkar-2/publication/326449608_The_Evolution_of_Iran's_Police_Force_s_and_Social_Control_in_the_Islamic_Republic/links/5b4e293aaca27217ff9e94c0/The-Evolution-of-Irans-Police-F-orces-and-Social-Control-in-the-Islamic-Republic.pdf)

Basij forces to interfere. As a result, the Supreme Leader's Guardian Special Forces or *niroo-ye vizhe pasdar-e velayat* (NOPO) was established under NAJA as a specialized unit for riot-control.<sup>550</sup>

Since the formation of NAJA, Islamization policies were further impeded where high ranks of previous police units were replaced by members of the former Committee and IRGC members. Women were recruited as a form of gender segregation to deal with women protesters and enforce the regime's law upon women. In 2005, a successor to the Committee became more active and operated under the umbrella of the Morality Patrol or the Guidance Patrol. The Morality Patrol had similar duties to the Committee; controlling social conduct and Islamic conservative principles in a severe manner.

### *Non-Military Institutions*

Iran has security agencies that are not directly and formally under its military apparatus, however, are intertwined in tasks with the military sector mainly due to broad mandates. Iran's most prominent non-military security sector agent is the Ministry of Intelligence and Security ("MOIS").

#### The Ministry of Intelligence and Security (MOIS)

The MOIS is one of the most influential intelligence agencies in the Middle East. MOIS is provided with extensive logistical, financial, and political support from the Iranian government. As a non-military organization, the MOIS operates both domestically and internationally, with a significant presence both inside and outside Iran.<sup>551</sup>

Similar to the entire security establishment of Iran, the main objective of Iran's MOIS (as well as its rival counterpart IRGC Intelligence Organization) is to preserve national security and the regime's agenda. It mainly monitors and infiltrates threats to the regime domestically. Due to Iran's position in the Middle East, these agencies heavily operate extrajudicially to gather information on foreign governments (especially of the Middle East) to exert influence where possible and track and stifle Iranian expatriate dissidents and oppositions. These dissidents

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<sup>550</sup> Saeid Golkar, *The Evolution of Iran's Police Forces and Social Control in the Islamic Republic*, No. 120 BRANDEIS UNIVERSITY: CROWN CENTER FOR MIDDLE EAST STUDIES1, 3 (July 2018), available at [https://www.researchgate.net/profile/Saeid-Golkar-2/publication/326449608\\_The\\_Evolution\\_of\\_Iran's\\_Police\\_Forces\\_and\\_Social\\_Control\\_in\\_the\\_Islamic\\_Republic/links/5b4e293aaca27217ft9e94c0/The-Evolution-of-Irans-Police-Forces-and-Social-Control-in-the-Islamic-Republic.pdf](https://www.researchgate.net/profile/Saeid-Golkar-2/publication/326449608_The_Evolution_of_Iran's_Police_Forces_and_Social_Control_in_the_Islamic_Republic/links/5b4e293aaca27217ft9e94c0/The-Evolution-of-Irans-Police-Forces-and-Social-Control-in-the-Islamic-Republic.pdf)

<sup>551</sup> The Library of Congress, *Iran's Ministry of Intelligence and Security: A Profile*, P. 6 (Dec. 2012), available at <https://irp.fas.org/world/iran/mois-loc.pdf>

include the Kurdish separatists, monarchists, and the left-wing Islamist organization, Mujahedeen-e Khalq, as well as targeting individual activists and journalists who participated in the 2009 Green Movement protests and subsequent unrest.<sup>552</sup>

The MOIS in Iran is believed to be involved in psychological warfare and disinformation campaigns against the government's opponents. These campaigns are designed to manipulate the media and mislead other intelligence agencies about Iran's military and intelligence capabilities. It is also reported that the MOIS has a Department of Disinformation, which is responsible for conducting these campaigns. The extent and impact of these campaigns on the political and social climate of Iran remain uncertain, but they are indicative of the MOIS's willingness to employ unconventional tactics to maintain the regime's power.

For example and recently, immediately after the death of 22-year-old Iranian Kurdish woman Mahsa (Jina) Amini in 2022, the hashtag #MahsaAmini has received 52 million tweets, and not all were supportive, as some of these tweets suggest the possibility of coordinated manipulation campaigns using bots. According to an analysis of the hashtag #OpIran, which is associated with the protests, has been a significant increase in the number of new accounts created since the protests began that have engaged in tweeting on the matter right after. Out of a sample of 108,000 accounts, around 13,000 were created in September, with most of these accounts being created in around 10 days following Amini's death. Despite X (formerly Twitter) being blocked in Iran, it is suggested that the large Iranian diaspora may be utilizing their efforts for her cause that reflects the situation of Iran, but there may also be other agendas at play.

Additionally, these intelligence agencies engage in procurement activities to acquire materials and components for producing arms, including missiles and drones. MOIS agents conduct their activities out of Iranian embassies throughout Europe, while IRGC intelligence primarily works with the MOIS to procure necessary resources and conduct operations of sabotage, assassinations, and espionage attempts.<sup>553</sup>

### *Human Rights Violations*

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<sup>552</sup> Kenneth Katzman, *Explainer: How Iran's Intelligence Agencies Work*, UNITED STATES INSTITUTE OF PEACE, (Feb. 17, 2023), available at

<https://iranprimer.usip.org/blog/2023/feb/17/explainer-how-iran%E2%80%99s-intelligence-agencies-work>

<sup>553</sup> Kenneth Katzman, *Explainer: How Iran's Intelligence Agencies Work*, UNITED STATES INSTITUTE OF PEACE, (Feb. 17, 2023), available at

<https://iranprimer.usip.org/blog/2023/feb/17/explainer-how-iran%E2%80%99s-intelligence-agencies-work>; also see The Library of Congress, *Iran's Ministry of Intelligence and Security: A Profile*, P. 1 (Dec. 2012), available at <https://irp.fas.org/world/iran/mois-loc.pdf>

The national security objectives stem from both actual and perceived external and internal threats. Legitimate security imperatives include preserving Iran's territorial integrity, economic stability, deterring regional and international threats, along with protecting its nuclear energy program. However, the perceived internal threats following the 1979 revolution made Iran develop a new layer of security objectives centered around preserving the religious identity of the newly formed regime. Since the revolution Iran's security forces have been committing a wide range of human rights violations under many ideological umbrellas, including the concept stipulated in Iran's Islamic Penal Code *Moharebeh*, which translates to "enmity against God" in Persian and is used to describe crimes such as armed rebellion, acts of terrorism, or attempts to overthrow the government, which is elaborated and punished by death under chapter eight of Iran's Islamic Penal Code.<sup>554</sup>

The concept of *Moharebeh*, has been utilized in favor of the current regime (which as previously discussed controls the entire security sector in Iran) to stifle political and social change and to criminalize a wide range of behaviors, activities, and even minority groups (including Kurds, Arabs, and Baluchis) that are deemed to be a threat to national security. The broad and vague definition allows Iran to exert authoritarian power on dissents and to perceive anything that opposes its ideologies as a threat to national security, and thus rationalizing its use of force in response.

The security sector of Iran, either military or non-military, overseen by the Supreme Leader, is responsible for numerous serious human rights violations, including external violations through the deployment of armed forces in various parts of the world and attacks on other jurisdictions, as well as violations through the use of torture, arbitrary detention, and internal extrajudicial killings of its own citizens.<sup>555</sup>

### *Security Sector Reform (SSR)*

The armed and security sector of Iran has received extensive scrutiny from a range of human rights monitoring bodies and watchdogs, encompassing civil society and international organizations, due to their recurring and organized perpetration of human rights violations over decades that were exacerbated after the 1979 Revolution. When Iran's political landscape undergoes a transformation towards democratic governance, a comprehensive and all-encompassing reform of the security sector is an immediate necessity.

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<sup>554</sup> Chapter eight of Iran's Islamic Penal Code, (November 20, 1991), available at <https://www.refworld.org/docid/518a19404.html>.

<sup>555</sup> Human Rights Watch, *Iran: Events of 2022*, available at <https://www.hrw.org/world-report/2023/country-chapters/iran>.



Security Sector Reform (SSR) is a process aimed at restructuring the security sector of a country, which refers to a collection of practices and measures aimed to enhance a state's capability to safeguard its citizens' safety and security, while still respecting and ensuring their rights as per domestic and international law. The security sector encompasses various actors, such as the police, military, judiciary, parliament, ministries, and non-state actors. Security actors that have the power to use force or enforce the law, such as the police, military, and correctional services, should be under civil control and democratic management. SSR aims to achieve three fundamental objectives: enabling the civilian government to hold all components of the security sector accountable, providing efficient security and justice services, and ensuring that the provision of these services is sustainable.<sup>556</sup> The SSR process aims to develop a comprehensive strategy to meet the security needs of all individuals of society and its fragments, and it establishes a security sector that is transparent, able to execute distinct institutional responsibilities, accountable to civilian authorities, and responsive to the needs of the public.<sup>557</sup>

SSR is often implemented during a period of political transition, such as post-conflict or during the transition from authoritarian regimes, as well as during the independence or unification of states. These transitional periods are typically marked by a fragile political and security environment where ineffective implementation of SSR could exacerbate the instability.

### Core Elements of SSR

Learning from past experiences of other countries, there are patterns identified when initiating an SSR process which are commonly addressed: 1) implementing instruments, 2) implementation of reforms, 3) international involvement, and 4) oversight mechanisms.

### Implementing Instruments

As an initiating process, SSR requires the implementation of instruments that establish a legal framework for the armed forces operations and their restructuring with the goal of laying out the proper foundation for a transition process that aims to prevent past violations, protect civilians, and adhere to international law's principles. Such instruments include the development of peace agreements, constitutional reform, legislative reforms, or codes of conduct, which set out the rights and obligations of the security sector's personnel.

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<sup>556</sup> Organization of Economic Cooperation and Development, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, 21 (2007).

<sup>557</sup> U.S. Agency for International Development, U.S. Department of Defense, U.S. Department of state, *Security Sector Reform*, 3.

- Peace Agreements

States may utilize peace agreements as the primary method of implementing armed forces reform. Peace agreements allow for a democratic process that facilitates discussion between all relevant parties to the conflict.<sup>558</sup> They also provide opportunities to address fundamental security issues, the restructuring of security forces, and the establishment of democratic oversight of the security apparatus.<sup>559</sup> Frequently, post-conflict peace agreements contain stipulations regarding democratic civilian oversight of the armed forces.<sup>560</sup>

Reforming armed forces through peace agreements has many advantages. Because armed forces swear allegiance to democratic institutions through the agreement and are subject to the control of these institutions, they are more likely to act in accordance with the national interest outlined in the agreement.<sup>561</sup> Additionally, because international entities are frequently involved in brokering peace reforms, they may offer additional support and resources to ensure the parties develop the necessary institutions and oversight to adhere to the agreement.<sup>562</sup>

For example, Liberia included provisions for armed forces reform in its Comprehensive Peace Agreement. The agreement disbanded irregular forces and reformed the military under a new structure.<sup>563</sup> The Authority also outlined recruitment for the reformed military forces. Forces could be drawn from the current Government of Liberia forces, military groups, and civilians with appropriate experience.<sup>564</sup> Ex-combatants could also participate subject to certain

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<sup>558</sup> Geneva Centre for Democratic Control of Armed Forces, *DCAF Backgrounder: Security Sector Reform in Post-Conflict Peacebuilding* 4 (May 2009).

<sup>559</sup> Geneva Centre for Democratic Control of Armed Forces, *DCAF Backgrounder: Security Sector Reform in Post-Conflict Peacebuilding* 4 (May 2009).

<sup>560</sup> Geneva Centre for Democratic Control of Armed Forces, *DCAF Backgrounder: Security Sector Reform in Post-Conflict Peacebuilding* 4 (May 2009), available at <http://www.dcaf.ch/Publications/Security-Sector-Reform-in-Post-Conflict-Peacebuilding>.

<sup>561</sup> Geneva Centre for Democratic Control of Armed Forces, *DCAF Backgrounder: Security Sector Reform in Post-Conflict Peacebuilding* 4 (May 2009).

<sup>562</sup> Geneva Centre for Democratic Control of Armed Forces, *DCAF Backgrounder: Security Sector Reform in Post-Conflict Peacebuilding* 4 (May 2009).

<sup>563</sup> *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* art. VII (Liberia, 2003).

<sup>564</sup> *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* art. VII(1)(b) (Liberia, 2003).

eligibility criteria.<sup>565</sup> The Authority also provided that the armed forces represent Liberia's ethnic diversity.<sup>566</sup>

Nepal's Comprehensive Peace Agreement imposed restrictions on the use of weapons and deployment of opposing parties.<sup>567</sup> Additionally, the Agreement confined the Maoist opposition to particular regions within Nepal and restricted their use of weapons to purely security purposes to protect their own people.<sup>568</sup> The Agreement also mandated that the interim Nepalese government establish a committee to address the monitoring, rehabilitation, and integration of Maoist militants in order to return them to their communities and possibly reenlist with the new Nepalese armed forces.<sup>569</sup>

Similarly, Afghanistan used the 2001 Bonn Agreement to establish an interim authority for governance.<sup>570</sup> The preamble of the agreement stipulated that some time would be needed for a new security force to be fully functional.<sup>571</sup> The first Annex to the agreement also called for international assistance in establishing and training the new armed forces, and asked that the UN Security Council consider a mandated force to assist in the interim maintenance of security in Kabul.<sup>572</sup>

- Constitutional Reform

States may also implement armed forces reform through constitutional measures. These reforms may refer to the role, command, oversight, and deployment of the armed forces. These measures typically build upon the basic democratic civilian oversight principle enunciated in the post-conflict peace agreement.

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<sup>565</sup> *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* art. VII(2)(a) (Liberia, 2003).

<sup>566</sup> *Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* arts. VII(2)(b) (Liberia, 2003).

<sup>567</sup> *Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal* art. 4.6 (Nov. 21, 2006), available at <http://un.org.np/node/10498>.

<sup>568</sup> *Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal* art. 4 (Nov. 21, 2006).

<sup>569</sup> *Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal* art. 4.4 (Nov. 21, 2006).

<sup>570</sup> *Bonn Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions* (Afghanistan, 2001), available at <http://www.un.org/News/dh/latest/afghan/afghan-agree.htm>.

<sup>571</sup> *Bonn Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions* Preamble (Afghanistan, 2001).

<sup>572</sup> *Bonn Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions* Annex I, para. 3 (Afghanistan, 2001).

In many instances, constitutional reform allows for civilian control of the armed forces. The constitution of Afghanistan centralizes control and executive power over the armed forces with the president as commander-in-chief.<sup>573</sup> However, the powers to declare war and to send the armed forces outside of Afghanistan are subject to the endorsement of the National Assembly, which also oversees the budget for the armed forces.<sup>574</sup>

Similarly, Liberia's constitution also provides for civilian control over the armed forces. While both the executive and legislature have balanced control over the forces, the legislature wields more power.<sup>575</sup> The president is the commander-in-chief, but the legislature holds responsibility for the defense of the nation, for raising and supporting the armed forces, and for declaring war.<sup>576</sup>

Constitutional reforms may also limit the role of the armed forces. These limitations may be appropriate in countries where armed forces were historically deployed to suppress internal dissent. For instance, South Africa used constitutional reforms to prevent the armed forces from being deployed for purposes other than repelling external aggressors or providing humanitarian assistance.<sup>577</sup> However, this type of constitutional reform may not work in post-conflict states facing continued militant insurgencies. In such cases, it may be necessary to deploy the armed forces domestically to support law enforcement agencies.<sup>578</sup> Constitutional reforms can help permit internal deployments and build mechanisms to prevent abuse.<sup>579</sup> In Liberia, the constitution features a "triple lock" mechanism that allows domestic deployments with the approval of the Ministry of Justice, the Ministry of Defense, and the President of Liberia.<sup>580</sup>

Similarly, Nepal's interim constitution aimed to quell militant insurgency. The constitution prioritized the reintegration of People's Liberation Army militants and required the executive branch to form a special committee to supervise, rehabilitate, and integrate the ex-combatants.<sup>581</sup> The constitution also provided for the democratization of the armed forces,

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<sup>573</sup> AFGHANISTAN CONST. art. 64(3) (1964).

<sup>574</sup> AFGHANISTAN CONST. art. 64(4), (6) (1964).

<sup>575</sup> THE REPUBLIC OF LIBERIA CONST. arts. 51, 54(e) (1986), *available at* [https://www.constituteproject.org/constitution/Liberia\\_1986.pdf?lang=en](https://www.constituteproject.org/constitution/Liberia_1986.pdf?lang=en).

<sup>576</sup> THE REPUBLIC OF LIBERIA CONST. arts. 51, 54(e) (1986)

<sup>577</sup> SOUTH AFRICA CONST. art. 198 (2012).

<sup>578</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, 114 (Feb. 2008), *available at* [http://www.oecd-ilibrary.org/development/the-oecd-dac-handbook-on-security-system-reform\\_9789264027862-en](http://www.oecd-ilibrary.org/development/the-oecd-dac-handbook-on-security-system-reform_9789264027862-en).

<sup>579</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, 114 (Feb. 2008).

<sup>580</sup> LIBERIA CONST. arts. 51, 54(e) (1986)

<sup>581</sup> INTERIM NEPAL CONST. art. 146 (2007), *available at* [http://www.worldstatesmen.org/Nepal\\_Interim\\_Constitution2007.pdf](http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf).

including the development of the forces as an institution that respects international human rights standards.<sup>582</sup> However, since the constitution remained transitional, violence did not stop and remained sporadic through the transition.

The Iraqi constitution gives the president a ceremonial and procedural role in relation to the armed forces, while the Prime Minister is the commander-in-chief.<sup>583</sup> The constitution also gives the federal government the exclusive authority to establish and manage armed forces.<sup>584</sup> To achieve this goal, Iraq instituted two types of constitutional reform. The first came in 2004 through the Law of Administration for the state of Iraq for the Transitional Period.<sup>585</sup> This law provided for civilian control over the armed forces, and that the forces were to be used for the purposes of defense.<sup>586</sup> Forces and militias outside the command of the government were prohibited.<sup>587</sup> The law gave the interim transitional government exclusive competence for creating and maintaining armed forces instead of delegating power to the Ministry of Defense.<sup>588</sup>

The second set of reforms came in 2005. While the 2004 Transitional Law maintained precedent, reforms were added with respect to certain issues.<sup>589</sup> The 2005 reforms clarified provisions relating to civilian authority over the armed forces and their role.<sup>590</sup> Specifically, the reforms added a requirement that the armed forces should reflect the religious and ethnic balance of the Iraqi people and prohibited discrimination or exclusion.<sup>591</sup> The constitution also designated the power to declare war and state of emergency to the Council of Representatives.<sup>592</sup> The Council also has direct oversight of the National Intelligence Service and exercises checks on the executive's power over the armed forces.<sup>593</sup>

- Legislative Reform

Addressing armed forces reform in legislative provisions may address issues such as compliance with international humanitarian laws and laws on the use of force; vetting, recruitment and training of new armed forces personnel; and the religious, ethnic, and political

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<sup>582</sup> INTERIM NEPAL CONST. arts. 144(3)-(4) (2007).

<sup>583</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, art. 25(b) (Iraq, 2004), available at <http://web.archive.org/web/20090423064920/http://www.CPA-iraq.org/government/TAL.html>.

<sup>584</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, art. 25(b) (Iraq, 2004).

<sup>585</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, arts. 5 (Iraq, 2004).

<sup>586</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, art. 5 (Iraq, 2004).

<sup>587</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, art. 27(a) (Iraq, 2004).

<sup>588</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, arts. 5, 27(d) (Iraq, 2004).

<sup>589</sup> IRAQ CONST. art. 9(1)(a) (2005), available at [http://www.iraqnationality.gov.iq/attach/iraqi\\_constitution.pdf](http://www.iraqnationality.gov.iq/attach/iraqi_constitution.pdf).

<sup>590</sup> IRAQ CONST. art. 9(1)(a) (2005).

<sup>591</sup> IRAQ CONST. art. 9(1)(a) (2005).

<sup>592</sup> IRAQ CONST. art. 61(9)(a) (2005)

<sup>593</sup> IRAQ CONST. art. 84(1) (2005)

diversity of the armed forces.<sup>594</sup> Such reform can also include detailed codes of military conduct that build upon the basic principles outlined in constitutional provisions.<sup>595</sup> These codes may impose standards of behavior that increase professionalism and accountability of the armed forces.<sup>596</sup>

For instance, Liberia enacted the National Defense Act (“NDA”) in 2008, which repealed and replaced previous military governance legislation.<sup>597</sup> The NDA pertained to governance, oversight and accountability, and recruitment of armed forces.<sup>598</sup> The NDA also created a set of checks and balances for regulating the armed forces by distributing power between the president and legislative bodies.<sup>599</sup>

During the interim period in Afghanistan, the 2002 Petersberg Decree on the Afghan National Army served as a legislative reform. The Decree established policies that were later integrated into constitutional and legislative reforms.<sup>600</sup> The Decree considered that armed forces would be under the command of civilian authorities, and organization and staffing would be based on a voluntary and inclusive system.<sup>601</sup>

Iraq also began its post-conflict reforms through the legislature. Soon after ousting Saddam Hussein, the coalition established the Coalition Provisional Authority.<sup>602</sup> The Authority served as an interim governing entity that provided governmental administration during the transitional period.<sup>603</sup> The Authority governed from April 2003 to June 2004.<sup>604</sup> In this time, the Authority issued a series of orders reforming the military organization of Iraq, such as the prioritization of dismantling all forces previously involved in supporting the old regime.<sup>605</sup>

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<sup>594</sup> United Nations, *Security Peace and Development: the Role of the United Nations in Supporting Security Sector Reform*, UNITED NATIONS SECURITY COUNSEL, 6 (Jan. 23, 2008), available at <http://unssr.unlb.org/Resources/UNDocuments/tabid/255/SMID/498/ItemId/78/Default.aspx>.

<sup>595</sup> United Nations, *Security Peace and Development: the Role of the United Nations in Supporting Security Sector Reform*, UNITED NATIONS SECURITY COUNSEL, 6 (Jan. 23, 2008).

<sup>596</sup> United Nations, *Security Peace and Development: the Role of the United Nations in Supporting Security Sector Reform*, UNITED NATIONS SECURITY COUNSEL, 6 (Jan. 23, 2008).

<sup>597</sup> *National Defense Act* sec. 1.1 (Liberia, 2008).

<sup>598</sup> *National Defense Act* sec. 1.1 (Liberia, 2008).

<sup>599</sup> *National Defense Act* sec. 3.6 (Liberia, 2008).

<sup>600</sup> Caroline A. Hartzell, *Missed Opportunities: The Impact of DDR on SSR in Afghanistan*, UNITED STATES INSTITUTE OF PEACE, 4 (2011).

<sup>601</sup> *Decree of the President of the Islamic Transitional state of Afghanistan on the Afghan National Army* (Afghanistan, 2002), available at <https://www.unric.org/html/german/afghanistan/talks2002/decreedecree.pdf>.

<sup>602</sup> *CPA Regulation Number 1*, sec. 1(1) (Iraq, 2003), available at [http://www.iraqcoalition.org/regulations/20030516\\_CPAREG\\_1\\_The\\_Coalition\\_Provisional\\_Authority\\_.pdf](http://www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf).

<sup>603</sup> *CPA Regulation Number 1*, sec. 1(1) (Iraq, 2003).

<sup>604</sup> *CPA Regulation Number 1*, sec. 1(1) (Iraq, 2003).

<sup>605</sup> *CPA Regulation Number 1*, sec. 1(1) (Iraq, 2003).

Nepal enacted legislative reforms in order to solidify democratic control of the armed forces and to diminish close ties between the armed forces and the monarchy. The Army Act of 2006 symbolically moved control of the armed forces from the monarchy to the people.<sup>606</sup> It also shifted the responsibility of the armed forces from the monarchy to the executive branch.<sup>607</sup> The Act also expressly mandated that armed forces act in support of the democratic civilian institutions of the government.<sup>608</sup>

South Africa primarily, and successfully, implemented legislative reforms. In the post-Apartheid era, the government began by preparing a White Paper on Defense that provided detailed recommendations regarding the reform of institutions. The Paper provided a set of priorities for defense policy, including the prevention and containment of conflict and war.<sup>609</sup> The government later enacted several legislative reforms that established various controls that ensured appropriate civilian oversight for South African defense policy, as well as executive and legislative responsibility for any defense issues.<sup>610</sup> Specifically, the Defense Amendment Act sought to divide oversight of the armed forces between military and civilian entities.<sup>611</sup> To this end, the Act created the Defense Secretariat, a civilian organization that advises and sets policy programs for the National Defense Force. The Secretariat is also responsible for developing the overall defense policy. Establishing the Secretariat helped create greater transparency and accountability for the management of defense.<sup>612</sup>

- Code of Conduct

States may also choose to implement military codes of conduct as a means of armed services reform for the post-conflict period. For example, Liberia's Uniform Code of Military Justice applies to off-duty and on-duty officers, and imposes stiff penalties for breaches of military law, including discharge from the armed forces.<sup>613</sup> The code applies to all members of the armed forces, even when they are off duty.<sup>614</sup> Afghanistan also established a Uniform Code

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<sup>606</sup> *Army Act 2006* preamble (Nepal, 2006), available at [http://www.justiceformainasunuwar.files.wordpress.com/2010/02/army-act-2006\\_english.pdf](http://www.justiceformainasunuwar.files.wordpress.com/2010/02/army-act-2006_english.pdf).

<sup>607</sup> *Army Act 2006* sec. 8 (Nepal, 2006).

<sup>608</sup> *Army Act 2006* preamble (Nepal, 2006).

<sup>609</sup> Len Le Roux, *The Post-Apartheid South African Military: Transforming with the Nation*, in EVOLUTIONS & REVOLUTIONS 235, 256 (2005).

<sup>610</sup> Sandy Africa, *The Transformation of the South African Security Sector: Lessons and Challenges*, GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, 19 (Mar. 2011), available at <http://www.dcaf.ch/Publications/The-Transformation-of-the-South-African-Security-Sector-Lessons-and-Challenge>.

<sup>611</sup> *Defense Amendment Act* (South Africa, 1995).

<sup>612</sup> Len Le Roux, *The Post-Apartheid South African Military: Transforming with the Nation*, in EVOLUTIONS & REVOLUTIONS 235, 264 (2005).

<sup>613</sup> *National Defense Act* sec. 8.4 (Liberia, 2008).

<sup>614</sup> *National Defense Act* sec. 8.4 (Liberia, 2008).

of Military Justice through legislative measures.<sup>615</sup> The code established thirty-four offenses, almost all of which incur a minimum punishment of at least one-year imprisonment.<sup>616</sup>

### Considerations for Iran

When reforming the armed forces, more than one implementing instrument may be required to ensure full compliance with the law. Each approach offers certain advantages for the parties. For instance, constitutional reforms allow for the parties to institute checks and balances to help delegate control of the armed forces to more than one party in order to ensure that power does not become centralized in one party or one office.<sup>617</sup> Additionally, creating provisions for the diversification of the armed forces may help create a more democratic armed force. For instance, Iraq sought to diversify its forces in the post-conflict transition through de-Ba'athification and using new recruitment processes.<sup>618</sup>

When instituting constitutional reform, parties may wish to consider outside factors, such as capacity and resources, to ensure the proposed reforms are carried through to implementation. For instance, constitutional reform of the armed forces in Afghanistan was relatively successful. The military was centralized in Kabul and under the command of the national government.<sup>619</sup> This system yielded a cohesive military that was less susceptible to the factionalism that previously eroded the military.<sup>620</sup> However, the reforms were unable to fully improve civilian oversight due to capacity limitations within the Ministry of Defense.<sup>621</sup> The inability to employ skilled administrators gave greater power to military personnel and weakened civilian control.<sup>622</sup>

Parties may also wish to consider whether the circumstances of the transition will allow the reforms to move forward. For instance, the Transitional Law in Iraq gave the interim transitional government authority over the creation and maintenance of the armed forces.<sup>623</sup> However, these provisions were ultimately not robust as coalition troops continued to hold major control over security-related matters.<sup>624</sup> Iraqi armed forces were subject to command of the

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<sup>615</sup> International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 14 (May 12, 2010).

<sup>616</sup> International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 14 (May 12, 2010).

<sup>617</sup> AFGHANISTAN CONST. art. 64(4), (6) (1964).

<sup>618</sup> CPA Regulation Number 1, s. 1(Iraq, 2003), available at

[http://www.iraqcoalition.org/regulations/20030516\\_CPAREG\\_1\\_The\\_Coalition\\_Provisional\\_Authority\\_.pdf](http://www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf).

<sup>619</sup> CNA Corporation, *Independent Assessment of the Afghan National Security Forces* 174 (Jan. 2014).

<sup>620</sup> CNA Corporation, *Independent Assessment of the Afghan National Security Forces* 174 (Jan. 2014).

<sup>621</sup> CNA Corporation, *Independent Assessment of the Afghan National Security Forces* 176 (Jan. 2014).

<sup>622</sup> CNA Corporation, *Independent Assessment of the Afghan National Security Forces* 176 (Jan. 2014).

<sup>623</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, arts. 5, 27(d) (Iraq, 2004).

<sup>624</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, art. 59(b) (Iraq, 2004).



coalition force until the election of a permanent government, thereby undermining the intention of the Transitional Law.<sup>625</sup>

When instituting legislative reforms, states may seek to ensure checks and balances within the laws to prevent one party from assuming too much control. For instance, Liberia's NDA was successful in dividing competencies between the executive and legislative branches.<sup>626</sup> Specifically, the NDA divided power for the regulation of the armed forces between the president and legislative bodies.<sup>627</sup> These reforms were successful in making the armed forces operational and establishing an extended period of peace within Liberia. Additionally, there was popular support for the armed forces, demonstrating practical effectiveness.<sup>628</sup>

States developing legislation to implement armed forces reform should also consider involving civil society in the process. South Africa's series of legislative measures were very successful in instituting civilian oversight of the armed forces. The key to the success of these reforms was the participation of CSOs.<sup>629</sup> There was inclusive local involvement and sustainability of the legislation.<sup>630</sup>

Iran's constitution also places significant responsibility on their armed forces, including defending the country's sovereignty and maintaining internal security. This politicization could increase the risk of the armed forces being deployed for domestic political reasons, such as the suppression of opposition forces. To mitigate this risk, a transitional government may need to consider reforming the constitution by removing references to broader political objectives and restricting the involvement of armed forces in political activities. By doing so, Iran could potentially improve the democratic accountability of their armed forces and ensure that they operate within the bounds of the law.

The Iranian constitution grants full control of the country's armed forces to the Supreme Leader, as stipulated in Article 110. This provision makes the Supreme Leader the ultimate authority over all security and defense matters, giving them the power to appoint the heads of the military and security organizations, as well as make decisions regarding national security policies. As a result, the armed forces operate under the direct authority and control of the

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<sup>625</sup> *The Law of Administration for the state of Iraq for the Transitional Period*, art. 59(b) (Iraq, 2004).

<sup>626</sup> *National Defense Act* sec. 3.6 (Liberia, 2008).

<sup>627</sup> *National Defense Act* sec. 3.6 (Liberia, 2008).

<sup>628</sup> *National Defense Act* sec. 3.6 (Liberia, 2008).

<sup>629</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, 32 (Feb. 2008), available [http://www.oecd-ilibrary.org/development/the-oecd-dac-handbook-on-security-system-reform\\_9789264027862-en](http://www.oecd-ilibrary.org/development/the-oecd-dac-handbook-on-security-system-reform_9789264027862-en).

<sup>630</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, 224 (Feb. 2008).

Supreme Leader, and their actions are subject to the leader's political and ideological perspectives.

Iran may address the issue of centralized control over the armed forces by adopting reforms that promote greater accountability, transparency, and diversification where multiple ethnic, religious, and CSOs are included.

### Implementation of Reforms

When implementing post-conflict SSR, states frequently begin with the process of demobilizing troops. In Afghanistan and Iraq, these reforms were far-reaching and resulted in the complete disbandment of the armed forces.<sup>631</sup> States may also shore up their capacity by creating new institutions to oversee the reform process and ensure adherence to the implementing instruments. To guarantee the success of reforms, it is important to ensure that actors involved in their implementation have the required knowledge and skills. This most often requires capacity building efforts or capability reforms.

- Capacity Building

Capacity building, or capability reforms, develops the institutional system of governance and management. “Building capacity” may refer to the structures, personnel, equipment, or resources involved with maintaining and organizing the armed forces.<sup>632</sup> For instance, Afghanistan approved the Afghanistan National Development Strategy in 2008, which aimed to assist reform efforts through improving administration, accountability, and ethnic balance.<sup>633</sup> The Strategy also sought to strengthen reform efforts that targeted corruption, gender balance, counter-narcotics operations, and budget stability for the armed forces.<sup>634</sup>

States may also seek to develop additional capacity by creating new institutions to implement armed services reform and provide greater civilian oversight. For instance, the Coalition Provisional Authority in Iraq created the Defense Support Agency (DSA), which was designated a civilian agency and charged with numerous logistical functions to support the New

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<sup>631</sup> CPA Order Number 2 sec. 1, annex A (Iraq, 2003), available at [http://www.iraqcoalition.org/regulations/20030823\\_CPAORD\\_2\\_Dissolution\\_of\\_Entities\\_with\\_Annex\\_A.pdf](http://www.iraqcoalition.org/regulations/20030823_CPAORD_2_Dissolution_of_Entities_with_Annex_A.pdf); Caroline A. Hartzell, *Missed Opportunities: The Impact of DDR on SSR in Afghanistan*, UNITED STATES INSTITUTE OF PEACE 4 (2011).

<sup>632</sup> United Nations, *Security Peace and Development: the Role of the United Nations in Supporting Security Sector Reform*, UNITED NATIONS SECURITY COUNSEL, 6 (Jan. 23, 2008), available at <http://unssr.unlb.org/Resources/UNDocuments/tabid/255/SMID/498/ItemId/78/Default.aspx>.

<sup>633</sup> Government of Afghanistan, *Afghanistan: National Development Strategy* 60 (Apr. 21, 2008).

<sup>634</sup> Government of Afghanistan, *Afghanistan: National Development Strategy* 60 (Apr. 21, 2008).

Iraqi Army.<sup>635</sup> Among other duties, the DSA was responsible for training support, recruitment, and logistics support.<sup>636</sup> The Authority also created a new Ministry of Defense, entirely separate from its pre-Saddam Hussein predecessor, and transferred authority over the New Iraqi Army to the Ministry of Defense.<sup>637</sup> Additionally, the Authority charged the Ministry of Defense with serving all Iraqis regardless of religious, sectarian, tribal, ethnic, or political affiliations, and included civilian control as one of its primary principles.<sup>638</sup>

To build capacity, states may also implement specific measures to ensure greater citizen participation in the reform process. For instance, Liberia instituted a robust vetting process for the armed services that required recruitment teams to visit potential armed forces candidates' home village, neighborhood, and school to conduct interviews with family members, friends, employers, and teachers.<sup>639</sup> Furthermore, civil society is also encouraged to engage in ensuring that individuals do not have a history of human rights abuses. To this end, photographs of the candidates are posted in public and members of the public can call a hotline with disqualifying information about candidates.<sup>640</sup>

### Considerations for Iran

When building capacity, states may seek to create new institutions to oversee the implementation process and ensure that the parties fully comply with the provisions of the implementing instruments. For instance, Afghanistan's National Development Strategy established a detailed policy framework on a number of issues related to SSR, such as combating corruption, promotion of gender balancing in the armed forces, developing a robust counter-narcotics operation, and creating a sustainable budget for the armed forces.<sup>641</sup> Furthermore, the Strategy included a National Action Plan that set forth a detailed action plan for agencies with specific deadlines for implementation.<sup>642</sup> Overall, Afghanistan's reforms have succeeded in building a cohesive military under the control of the Afghan government. Additionally, public confidence in the armed forces was quite high.<sup>643</sup>

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<sup>635</sup> CPA Order Number 42 sec. 2 (Iraq, 2003).

<sup>636</sup> CPA Order Number 42 sec. 2 (Iraq, 2003).

<sup>637</sup> CPA Order Number 67 sec. 2 (Iraq, 2004).

<sup>638</sup> CPA Order Number 67 secs. 4(3)(a), 5(c) (Iraq, 2004).

<sup>639</sup> International Crisis Group, *Liberia: Uneven Progress in Security Sector Reform*, AFRICA REPORT NO. 148, 12 (Jan. 13, 2009).

<sup>640</sup> International Crisis Group, *Liberia: Uneven Progress in Security Sector Reform*, AFRICA REPORT NO. 148, 12 (Jan. 13, 2009).

<sup>641</sup> Government of Afghanistan, *Afghanistan: National Development Strategy* 60 (Apr. 21, 2008).

<sup>642</sup> Government of Afghanistan, *Afghanistan: National Development Strategy* 191 (Apr. 21, 2008).

<sup>643</sup> The Asia Foundation, *Afghanistan in 2013: A Survey of the Afghan People* 36 (2013).

In contrast, Nepal provides an instance in which reforms failed due to the inability of parties to properly adhere to the provisions. Due to a lack of international support and guidance, local populations drove and guided Nepal's military legislative reform.<sup>644</sup> However, many of the reforms were unsuccessful as violence persisted.<sup>645</sup> Local populations continued to distrust the armed forces, and peace building was undermined.<sup>646</sup> Additionally, the implementing instruments gave little acknowledgement to the human rights abuses perpetrated by the government and instituted no meaningful accountability or reparation mechanisms to address these violations.<sup>647</sup>

In Iraq, centralization of power in the executive has undermined the reform process. Although SSR in Iraq emphasized civilian control of the military, control eventually became centralized in the executive branch.<sup>648</sup> Power was specifically consolidated in the Prime Minister's office under Nouri al-Maliki, who retained personal control of the Interior Ministry, promoted those loyal to him, and moved specialized military units out of the normal chain of command.<sup>649</sup>

### International Involvement

International entities may play a more direct role in keeping the peace during a transitional period while the armed forces are being restructured. For instance, international coalition forces were exclusively responsible for maintaining peace in Iraq and Afghanistan for several years while reforms were being implemented. In Iraq, the Coalition Provisional Authority held all political and military functions during the transitional phase.<sup>650</sup> Iraq also

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<sup>644</sup> House of Commons Library, *Nepal's endless peace process, 2006-12*, 13 (Oct. 11, 2003), available at <http://www.parliament.uk/business/publications/research/briefing-papers/SN04229/nepals-endless-peace-process-200612>.

<sup>645</sup> Mihaela Racovita, Ryan Murray, Sudhindra Sharma, In Search of Lasting Security: An Assessment of Armed Violence in Nepal, SMALL ARMS SURVEY 31 (May 2013), available at <http://www.smallarmssurvey.org/fileadmin/docs/C-Special-reports/SAS-SR20-In-Search-of-Lasting-Security-NAVA.pdf>.

<sup>646</sup> Mihaela Racovita, Ryan Murray, Sudhindra Sharma, In Search of Lasting Security: An Assessment of Armed Violence in Nepal, SMALL ARMS SURVEY 31 (May 2013), available at <http://www.smallarmssurvey.org/fileadmin/docs/C-Special-reports/SAS-SR20-In-Search-of-Lasting-Security-NAVA.pdf>.

<sup>647</sup> Ruben Carranza, *Relief, Reparations, and the Root Causes of Conflict in Nepal*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 8 (Oct. 2012), available at <http://www.ictj.org/sites/default/files/ICTJ-Nepal-Reparations-2012-English.pdf>.

<sup>648</sup> Yasir Abbas & Dan Trombly, *Inside the Collapse of the Iraqi Army's 2nd Division*, WAR ON THE ROCKS (July 1, 2014).

<sup>649</sup> Yasir Abbas & Dan Trombly, *Inside the Collapse of the Iraqi Army's 2nd Division*, WAR ON THE ROCKS (July 1, 2014).

<sup>650</sup> Peter Khalil, *Rebuilding and Reforming the Iraqi Security Sector*, THE SABAN CENTER FOR MIDDLE EAST AT THE BROOKINGS INSTITUTION, 22 (2006)

utilized foreign troop assistance. While U.S. troops completed withdrawal 2011, Special Forces advisors returned to Iraq following the recent advances of the Islamic state.<sup>651</sup>

### Considerations for Iran

During transitional justice, involvement of international actors may be required. The international community, particularly the United Nations, may play a crucial role in facilitating and monitoring transitional justice efforts in Iran. A transition government should consider the extent to which the international community should be involved in transition efforts (e.g., providing technical assistance, financial support, or expertise in establishing and implementing mechanisms for accountability, such as truth commissions, judicial processes, and reparations programs). The involvement of the international community can also help ensure that the process is transparent, impartial, and free from political interference. However, it is important to note that any international involvement must be conducted in a manner that respects Iran's sovereignty and the country's cultural and political context.

Iran may also need to consider reforms in its capacity building efforts for its armed forces to fight corruption. Iran may need to implement reforms that prioritize capacity building and training for military leaders who possess the necessary skills and ethical standards to lead the armed forces without abusing power. Additionally, codes of conduct and punishments for violations can be utilized to enforce military reforms and ensure accountability for those who engage in misconduct or illegal activities. International actors may also play a role in supporting these reforms and providing guidance on best practices for capacity building in the armed forces.

### Oversight Mechanisms

Oversight mechanisms play a crucial role in ensuring the effectiveness, accountability, and integrity of the security sector. Oversight mechanisms include entities that administer supervision, inspection, responsibility, and control.<sup>652</sup> These mechanisms may help promote good governance by ensuring that reforms are being properly administered and followed.<sup>653</sup> Such mechanisms can come in many forms, including a system of checks and balances between

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<sup>651</sup> Yasir Abbas & Dan Trombly, *Inside the Collapse of the Iraqi Army's 2nd Division*, WAR ON THE ROCKS (July 1, 2014).

<sup>652</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 112 (Feb. 2008).

<sup>653</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 112 (Feb. 2008).

the executive and the legislature or through civil society groups.<sup>654</sup> Local oversight mechanisms are important for the transition process as they increase accountability to the communities served.<sup>655</sup>

- Executive

As an example, the Afghan Constitution provides for executive oversight of the military reforms by centralizing control. Such a mechanism came about due to the unrest in the country and continuing struggle between the central government and local power-holders.<sup>656</sup> The executive is subject to a system of checks and balances from the National Assembly.<sup>657</sup> While this system was successful in maintaining a cohesive military, it failed to improve civilian oversight due to a lack of administrative capacity building.<sup>658</sup>

- Legislative

Legislative oversight mechanisms may take a number of forms. One such method relies on a system of checks and balances in which the legislature shares certain powers over the armed forces with the executive or another branch of government. For instance, Afghanistan gives the executive power to manage the armed forces, but requires the legislature to endorse the executive's actions.<sup>659</sup> Additionally, the power to appoint and dismiss armed forces officers is shared between the two.<sup>660</sup>

Another example of a legislative oversight mechanism is parliamentary oversight. For instance, South Africa instituted parliamentary oversight mechanisms. The success of the South African reforms was tied to the emphasis placed on civilian participation and oversight, which allowed for transparency and political will.<sup>661</sup> To this end, the state established the Defense Secretariat. The Secretariat provided transparency and accountability for defense management

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<sup>654</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 112 (Feb. 2008).

<sup>655</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 112 (Feb. 2008).

<sup>656</sup> Afghanistan Legal Education Project at Stanford Law School, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF AFGHANISTAN 110 (2013), available at [http://alep.stanford.edu/wp-content/uploads/2011/02/ALEP\\_An-Introduction-to-the-Constitutional-Law-of-Afghanistan.pdf](http://alep.stanford.edu/wp-content/uploads/2011/02/ALEP_An-Introduction-to-the-Constitutional-Law-of-Afghanistan.pdf)

<sup>657</sup> AFGHANISTAN CONST. art. 64(4), (6) (2004).

<sup>658</sup> CNA Corporation, *Independent Assessment of the Afghan National Security Forces* 174 (Jan. 2014).

<sup>659</sup> AFGHANISTAN CONST. art. 64(13) (2004).

<sup>660</sup> AFGHANISTAN CONST. art. 64(13) (2004).

<sup>661</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 224 (Feb. 2008).

by operating as a civilian organization within the Ministry of Defense.<sup>662</sup> Additionally, South Africa has a multiparty Portfolio Committee of Parliament on Defense, which is open to all parties represented in the legislature and acts as one of the legislative oversight mechanisms.<sup>663</sup>

- Judicial

States may also rely on the judicial branch to oversee reforms and ensure the armed forces operate within the law. For instance, Afghanistan implemented a system of military courts to oversee the implementation of armed forces reform and the new military justice codes.<sup>664</sup>

Liberia's Military Code also serves as a judicial oversight mechanism through its ties to the military court system. Violations of the military court result in military justice proceedings that can result in removal from the armed forces.<sup>665</sup> Each brigade has a General Court Martial consisting of three to five officers, one president, one judge advocate, a Brigade Major, and a clerk.<sup>666</sup> The General Court Martial has jurisdiction over officers above the rank of Captain.<sup>667</sup> The President has authority to regulate the penalties imposed by courts martial.<sup>668</sup>

- Independent Commissions

In post-conflict situations, states may also rely on independent commissions to ensure compliance with the law and promote justice for victims of violence and abuse. For instance, Nepal's Comprehensive Peace Agreement mandated the establishment of a truth and reconciliation commission that would provide justice for war time victims and punish serious war crimes.<sup>669</sup> However, implementation was slow and only took place after the People's Liberation Army disbanded and followed the position of the Maoists.<sup>670</sup> Additionally, the commission did not include effective mechanisms for addressing human rights abuses.<sup>671</sup>

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<sup>662</sup> Len Le Roux, *The Post-Apartheid South African Military: Transforming with the Nation*, in EVOLUTIONS & REVOLUTIONS 235, 264 (2005).

<sup>663</sup> Len Le Roux, *The Post-Apartheid South African Military: Transforming with the Nation*, in EVOLUTIONS & REVOLUTIONS 235, 258 (2005).

<sup>664</sup> International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 14 (May 12, 2010).

<sup>665</sup> Check previous sections for primary citation

<sup>666</sup> *National Defense Law* sec. 200 (Liberia, 1956).

<sup>667</sup> *National Defense Law* sec. 200 (Liberia, 1956).

<sup>668</sup> *National Defense Law* sec. 203 (Liberia, 1956).

<sup>669</sup> *Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal* arts. 5.2.4-5.2.5 (Nov. 21, 2006).

<sup>670</sup> Commission on Investigation of Disappeared Persons, Truth and Reconciliation Commission Act (2014).

<sup>671</sup> Ruben Carranza, *Relief, Reparations, and the Root Causes of Conflict in Nepal*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (Oct. 2012).

- International Oversight

International entities may also serve an oversight function in the post-conflict transition. For example, Afghanistan received support from the United Nations and the Japanese government, which oversaw the Afghanistan New Beginnings Program.<sup>672</sup> This program absorbed the relatively unsuccessful defense commissions and helped disarm militias and assisted the DDR (Disarmament, demobilization and reintegration) program.<sup>673</sup>

Nepal unsuccessfully received oversight assistance from the United Nations. The UN Mission in Nepal, established in 2007, did not have its mandate renewed in 2010, and was expelled from Nepal.<sup>674</sup> Almost all political parties in Nepal viewed the mission with mistrust, despite its work in releasing and rehabilitating thousands of child soldiers.<sup>675</sup>

Oversight mechanisms are essential to ensure accountability at all levels of government during the armed services reform process and ensure civilian involvement in the security sector. However, to be successful, these mechanisms require the parties to have the expertise and capacity to carry their mandates through implementation. For instance, Afghanistan envisioned a checks and balances approach to ensure that the legislative branch could oversee the authority of the executive.<sup>676</sup> Yet, there have been flaws in Afghanistan's ability to conduct legislative oversight. Much of this is attributed to the failure to properly conduct capacity building and strengthen the skills and abilities of civilian advisers.<sup>677</sup>

Similarly, parliamentary oversight generally has been weak in post-conflict and post-authoritarian countries.<sup>678</sup> Much of this can be attributed to a lack of transparency, a lack of expertise, and an emphasis on international security cooperation in post-conflict transitions.<sup>679</sup> Effective oversight is achieved when customary practice is strong and there are adequate resources, expertise, and political will.<sup>680</sup> While customary practice and expertise can be developed over time, they can also be encouraged through mechanisms such as regular

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<sup>672</sup> Caroline A. Hartzell, *Missed Opportunities: The Impact of DDR on SSR in Afghanistan*, UNITED STATES INSTITUTE OF PEACE 4 (2011), available at [http://www.usip.org/sites/default/files/SR270-Missed\\_Opportunities.pdf](http://www.usip.org/sites/default/files/SR270-Missed_Opportunities.pdf)

<sup>673</sup> A. Hartzell, *Missed Opportunities: The Impact of DDR on SSR in Afghanistan*, UNITED STATES INSTITUTE OF PEACE 8 (2011), available at [http://www.usip.org/sites/default/files/SR270-Missed\\_Opportunities.pdf](http://www.usip.org/sites/default/files/SR270-Missed_Opportunities.pdf)

<sup>674</sup> House of Commons Library, *Nepal's endless peace process, 2006-12*, 12 (Oct. 11, 2003).

<sup>675</sup> House of Commons Library, *Nepal's endless peace process, 2006-12*, 13 (Oct. 11, 2003).

<sup>676</sup> AFGHANISTAN CONST. art. 64(13) (2004).

<sup>677</sup> International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 10 (May 12, 2010).

<sup>678</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 113 (Feb. 2008).

<sup>679</sup> Hans Born, Philipp Fluri and Anders Johnsson, *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, 20 (2003).

<sup>680</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 117 (Feb. 2008).



defense-related debates, questions and inquiries, meetings with senior military officers, and visits to armed forces facilities.<sup>681</sup> Engaging with civilian populations to develop a common vision of the role and organization of the new post-conflict armed forces can also develop them.<sup>682</sup>

South Africa's parliamentary oversight reform measures were successful because they relied on the competence of the country's civil servants.<sup>683</sup> Their substantial civilian oversight experience from the pre-apartheid era was essential to implementing the reforms.<sup>684</sup> Civil society groups incorporate citizen perspectives and help develop institutions locally. Additionally, such oversight mechanisms help in successfully advocating, implementing, monitoring, and evaluating reforms.<sup>685</sup>

Judicial oversight also requires that parties possess the necessary expertise to apply the law consistently and effectively. For instance, Afghanistan's attempts at judicial oversight were greatly hampered by lack of expertise and inconsistent implementation. While military courts handled 1,779 cases between 2006 and 2009, the system was highly flawed and enforcement was sporadic.<sup>686</sup> Many leaders in the Ministry of Defense and their deputies lacked professionalism and failed to properly enforce the laws and military codes.<sup>687</sup>

### Considerations for Iran

Iran may choose to implement new oversight mechanisms in order to strengthen a system of checks and balances for the armed forces. Such reform can be: (1) oversight role of the Iranians legislature with respect to military policy, budget, and administration; (2) measures that might encourage scrutiny by civil society organizations and citizens; (3) the role of the Ministry of Defense as the commanding civilian authority. However, if Iran chooses to move forward with any, or a combination of such measures, Iran may wish to consider shoring up capacity and professionalism prior to relying on those methods of oversight. As demonstrated by South Africa, successful civilian oversight also requires active and robust civil society involvement.

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<sup>681</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 127-134 (Feb. 2008).

<sup>682</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 224 (Feb. 2008).

<sup>683</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 224 (Feb. 2008).

<sup>684</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 224 (Feb. 2008).

<sup>685</sup> Organization for Economic Co-operation and Development, *The OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice*, OECD 224 (Feb. 2008).

<sup>686</sup> International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 14 (May 12, 2010).

<sup>687</sup> International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 14 (May 12, 2010).

As such, Iran may seek to engage civil society groups in developing oversight mechanisms to ensure they fully incorporate civilians.

### *Considerations on Security & Armed Forces a Transition Government*

With regards to security and armed forces, a transition government will need to consider the existing structure of security agencies in Iran, which are both military and non-military institutions, as well as the existing constitutional framework designating the Supreme Leader as the ultimate authority over all security and defense matters. A transition government may consider:

- The role of the Artesh in Iran's politics and society, in particular existing tensions between the Artesh and the IRGC and the role of the Artesh in relation to other Iranian forces (such as the IRGC), and whether this role should be equalized or harmonized.
- The role of the IRGC in Iran's politics and society. This will include considering:
  - The role of the Basij, which functions as a paramilitary organization and functions as an enforcer of existing religious and political ideologies over Iranian citizens;
  - The role and priorities of the Quds force, which have been affiliated with foreign militaries and their actions; and
  - The role and priorities of the IRGC's intelligence organization, which currently operates under the Office of the Supreme Leader. This role should be considered in light of the transition government's priorities for the role of the Ministry of Intelligence and Security.
- The role of the LEF or NAJA in Iran's politics and society. This will include considering:
  - Recent reforms to the structure of Iran's police force, including the 1990 legislative amendments to merge all of the security branches of the Islamic Revolutionary Committee into a centralized police force and the role and mandate of NAJA in relation to other Iranian security forces (such as the Basij).
- Whether and how constitutional reforms may facilitate improved accountability mechanisms over the military and security forces; decrease the politicization of the armed forces and provide a balance of power over the armed forces, rather than place control solely with one branch of the government.
- Whether legislation or procedures should be amended to facilitate diversification of the armed forces.
- Whether the armed forces should be centralized under the control of the national government.

- Whether and how Iranian ministries and the Iranian legislature may have oversight and increased civilian control over the armed forces.
- Whether and how transitional legislation may be created to facilitate a smooth transition of power over armed forces, including by giving the transitional government authority over the creation and maintenance of armed forces until a permanent government is established.
- Whether and which tool would be appropriate for security sector reform (e.g., a peace agreement, constitutional reform, legislative reform, or code of conduct). This may include considering:
  - That constitutional reforms allow for parties to institute check and balances to help delegate control of the armed forces to multiple actors to ensure that power does not become centralized;
  - The circumstances of the post-conflict context, which may include providing the transition government with interim power over the armed forces;
  - Whether and how civil societies may help provide civilian oversight over the armed forces;
  - Whether and how the armed forces are tasked with maintaining domestic political interests; and
  - The existing constitutional powers of the Supreme Leader over security services.
- Building capacity of the armed forces to help reform efforts, including through the building of skills to target corruption, improve gender balance, and conduct counter-narcotic operations.
- Developing institutions and measures to provide greater civilian oversight over security forces and participation in the reform process.

## Trade & Economy

### *Trade*

Despite not being a full member of the World Trade Organization (“WTO”) and facing extensive sanctions, Iran has maintained a trade portfolio. Over the years, this portfolio has faced a number of changes: with a marked decrease in the value of exports; changes in Iran’s key export partners; and changes in the breakdown of products Iran exports. Iran first submitted an application for WTO accession in July 1996, with this application being approved in May 2005, granting Iran status as an observer member.<sup>688</sup> Since this time, Iran has moved away from pursuing WTO accession. In August 2017, Iran’s Deputy Minister of Industry, Mine, and Trade, Mojtaba Khosrotaj, stated that joining the WTO was no longer a priority for Iran.<sup>689</sup>

In 2000, Iran’s exports were quantified at \$ 26.1 billion (USD). Of this, the overwhelming majority of exports were petroleum products (roughly 83.07%).<sup>690</sup> In 2000, Iran’s major export partners included Japan (18.4% of exports), Taiwan (10.5% of exports), China (6.21% of exports), and South Korea (8.13% of exports). In 2020, Iran’s exports were quantified at \$ 10.8 billion (USD). Relative to 2000, the exported products had a more diverse profile in 2020, with a large amount of plastics products (23.1%), petroleum products (16.1%), edible fruits and nuts (12.4%), and organic chemical products (11%).<sup>691</sup> Iran’s export partners in 2020 also changed to reflect its varying relations with each state, with its major exports now including China (54.4%), Turkey (10.8%), Pakistan (3.27%), United Arab Emirates (3.21%), and Armenia (2.68%).<sup>692</sup>

### *International Sanctions on Iran*

Iran is currently subject to a comprehensive list of international sanctions, including sanctions by the United Nations, European Union, and United States. A number of these

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<sup>688</sup> Saman Yousefvand, *The Islamic Republic of Iran Accession to the WTO*, Ministry of Foreign Affairs, (May 2016), available at [https://www.wto.org/english/thewto\\_e/acc\\_e/iran\\_session1\\_e.pdf](https://www.wto.org/english/thewto_e/acc_e/iran_session1_e.pdf), p. 4.

<sup>689</sup> Saeed Jalili, *Iran Abandons hope for WTO accession*, Al-Monitor, available at <https://www.al-monitor.com/originals/2017/09/iran-wto-world-trade-organization-accession-nuclear-deal.html>.

<sup>690</sup> Iran, Observation of Economic Complexity, available at <https://oec.world/en/profile/country/irn?exportServicesYearsSelector=2000&yearSelector1=exportGrowthYear6>.

<sup>691</sup> Iran, Observation of Economic Complexity, available at <https://oec.world/en/profile/country/irn?depthSelector1=HS2Depth&exportServicesYearsSelector=2000&yearSelector1=exportGrowthYear26&yearlyTradeFlowSelector=flow0>.

<sup>692</sup> Iran, Observation of Economic Complexity, available at <https://oec.world/en/profile/country/irn?depthSelector1=HS2Depth&exportServicesYearsSelector=2000&yearSelector1=exportGrowthYear26&yearlyTradeFlowSelector=flow0>.

sanctions were lifted in 2015 after Iran agreed to the Joint Comprehensive Plan of Action (“JCPOA”).<sup>693</sup> The JCPOA stipulated that many of the stricter sanctions against Iran would be lifted in exchange for Iran suspending most of its nuclear program and allowing inspections of its nuclear facilities. In 2020, following the U.S. withdrawal from the JCPOA and attacks on significant Iranian leaders, Iran resumed parts of its nuclear program.<sup>694</sup> Many of these sanctions stem from a September 2005 report by the UN’s nuclear oversight body, the International Atomic Energy Association (“IAEA”), which found that Iran was not in compliance with its international obligations under the Treaty on the Non Proliferation of Nuclear Weapons.<sup>695</sup>

The UN sanctions include the:

- 2006 embargo on materials and technology used in uranium or ballistic missile production, as well as blocking of financial transactions that abetted nuclear and ballistic missile production;<sup>696</sup>
- 2007 block of non-humanitarian assistance to Iran;
- 2008 UN resolution mandating states to inspect Iranian cargo; and
- 2010 resolution to tighten international sanctions.<sup>697</sup>

The EU and US sanctions go beyond the UN sanctions. The EU sanctions include the:

- 2007 freezing of all assets belonging to individuals and entities related to Iran’s nuclear and ballistic missile programs;<sup>698</sup>
- 2010 blocking of European institutions from transacting with Iranian banks, and restrictions on trade and investment with Iran;<sup>699</sup>
- 2012 ban on the import of oil and petrochemical products, provision of insurance on shipping, and freeze of assets of Iran’s Central Bank;<sup>700</sup> and
- Various sanctions between 2011 to present day for Iran’s human rights violations, which includes freezing assets, imposing travel bans for human rights violations,

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<sup>693</sup> See below for discussion on the JCPOA.

<sup>694</sup> Kali Robinson, Council on Foreign Relations, *What is the Iran Nuclear Deal*, (July 20, 2022), available at <https://www.cfr.org/backgrounder/what-iran-nuclear-deal>.

<sup>695</sup> International Atomic Energy Agency, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, (Sept. 24, 2005), available at <https://www.iaea.org/sites/default/files/gov2005-77.pdf>.

<sup>696</sup> Elissa Gootman, *Security Council Approves Sanctions Against Iran Over Nuclear Program*, (Dec. 24, 2006), available at <https://www.nytimes.com/2006/12/24/world/24nations.html>.

<sup>697</sup> Kelsey Davenport, UN Security Council Resolutions on Iran, Arms Control Association, (Jan. 2022), available at <https://www.armscontrol.org/factsheets/Security-Council-Resolutions-on-Iran>.

<sup>698</sup> Council Regulation (EC) No 423/2007, The Council of the European Union, (Apr. 19, 2007), available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:103:0001:0023:en:PDF>.

<sup>699</sup> Council Regulation (EC) No 961/2010, The Council of the European Union, (Oct. 25, 2010), available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF>.

<sup>700</sup> Council Regulation (EC) No 267/2012, The Council of the European Union, (Mar. 23, 2012), available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:en:PDF>.

and banning the export of equipment that could be used for telecommunication surveillance or domestic repression.<sup>701</sup>

The U.S. sanctions on Iran are prolific and cover a range of areas, including Iran's financial sphere, oil exports, trade, asset freezes, travel bans, and weapons development.<sup>702</sup> These sanctions are far-reaching and permeate throughout numerous sectors, commentators have organized more comprehensive lists of the sanctions imposed on Iran,<sup>703</sup> which include:

- 2020 measures to block transactions with and barring entry to the U.S. financial system for any individual or entity operating in mining, construction, manufacturing, or textiles; and sanctions on individuals supporting Iran's nuclear, missile, and conventional arms-related activities;
- 2012 measures imposing sanctions on entities conducting transactions for the acquisition of Iranian oil or conducting any business with Iran's national oil company, including insurers and shippers.
- 2011 prohibition on U.S. based institutions from having any financial business with Iran.<sup>704</sup> These prohibitions are significant, as the U.S. Treasury Department also enforces sanctions against any foreign institutions or subsidiaries that conduct business with Iran from business in the United States or with the U.S. dollar;<sup>705</sup>
- 1995 embargo on trade that prohibits most U.S. firms from trading with or investing in Iran;<sup>706</sup>
- 1992 sanction of any person or entity that assists Iran with developing or acquiring certain types of weapons,<sup>707</sup> and

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<sup>701</sup> European Union Restrictive measures (sanctions) in force (Regulations based on Article 215 TFEU and Decisions adopted in the framework of the Common Foreign and Security Policy), European Commission Service for Foreign Policy Instruments, (Jul. 7, 2016), *available at*

[https://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/measures\\_en.pdf](https://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/measures_en.pdf); Iran: EU restrictive measures, European Council, *available at* <https://www.consilium.europa.eu/en/policies/sanctions/iran/>.

<sup>702</sup> Zachary Laub, *International Sanctions on Iran*, Council on Foreign Relations, (Jul. 15, 2015), *available at* <https://www.cfr.org/background/international-sanctions-iran..>

<sup>703</sup> Iran Primer, Timeline of U.S. Sanctions, (Mar. 21, 2023), *available at* <https://iranprimer.usip.org/resource/timeline-us-sanctions>.

<sup>704</sup> Bureau of Economic, Energy, and Business Affairs, *Fact Sheet: Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA)*, U.S. Department of State, (May 23, 2011), *available at* <https://2009-2017.state.gov/e/eb/esc/iransanctions/docs/160710.htm>.

<sup>705</sup> Bureau of Economic, Energy, and Business Affairs, *Fact Sheet: Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA)*, U.S. Department of State, (May 23, 2011), *available at* <https://2009-2017.state.gov/e/eb/esc/iransanctions/docs/160710.htm>.

<sup>706</sup> CISADA, The New U.S. Sanctions on Iran, The Department of the Treasury, *available at* <http://www.treasury.gov/resource-center/sanctions/Documents/12959.pdf>.

<sup>707</sup> Iran-Iraq Arms Nonproliferation Act of 1992, U.S. Department of State, *available at* <https://2009-2017.state.gov/t/isn/c15237.htm>.

- Various sanctions between 2001 to present day, which freeze the assets and impose travel bans on Iranian individuals and entities (including financial institutions, Iranian leaders, and the IRGC).<sup>708</sup>

Following the ongoing civil unrest in Iran, in January 2023, a number of states (including the EU, UK, and EU) have taken steps to impose further sanctions on Iran.<sup>709</sup> States have also taken steps to sanction Iran's Islamic Revolutionary Guard and declare it a terrorist organization.<sup>710</sup>

In February 2023, a member of Iran's Chamber of Commerce noted that Iran was currently conducting direct trade only with five other states: China, Russia, Turkey, and Oman.<sup>711</sup> Iran's trade with other states is done through intermediary states.<sup>712</sup> The impact of U.S. sanctions on Iran's trade efforts is estimated to be significant, as states with significant joint investments with the U.S. (e.g., Japan), take a cautious approach to their trade with Iran.<sup>713</sup>

### *Review of Interested Trade Partners and Revival of Past Trade Agreements and Projects*

The transitional government should consider that there is significant interest in Iran's potential for crude oil production. Shortly after the JCPOA was implemented,<sup>714</sup> Iran raised crude oil production from 2.8 million barrels per day in December 2015 to 3.7 million barrels per day within eight months.<sup>715</sup> When discussions to lift sanctions on Iran have emerged in the past,

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<sup>708</sup> Zachary Laub, *International Sanctions on Iran*, Council on Foreign Relations, available at <https://www.cfr.org/background/international-sanctions-iran>.

<sup>709</sup> United States Institute of Peace, *E.U. Sanctions Iran for Human Rights Violations*, The Iran Primer, (Jan. 24, 2023), available at <https://iranprimer.usip.org/index.php/blog/2023/jan/24/eu-sanctions-iran-human-rights-violations>; United States of Peace, *U.S. Sanctions for Crackdown on Protests*, The Iran Primer, (Jan. 24, 2023), available at <https://iranprimer.usip.org/blog/2023/jan/24/us-sanctions-crackdown-protests>.

<sup>710</sup> Maziar Motamedi, *More sanctions as Iran and EU clash over IRGC 'terror' label*, (Jan. 23, 2023), available at [https://www.aljazeera.com/news/2023/1/23/more-sanctions-as-iran-and-eu-clash-over-irgc-terror-label?traffic\\_source=KeepReading](https://www.aljazeera.com/news/2023/1/23/more-sanctions-as-iran-and-eu-clash-over-irgc-terror-label?traffic_source=KeepReading).

<sup>711</sup> Iran International, *Iran Conducts Direct Trade Only with Five Countries: Official*, (Feb. 7, 2023), available at <https://www.iranintl.com/en/202302078253>.

<sup>712</sup> Iran International, *Iran Conducts Direct Trade Only with Five Countries: Official*, (Feb. 7, 2023), available at <https://www.iranintl.com/en/202302078253>.

<sup>713</sup> Iran International, *Iran Conducts Direct Trade Only with Five Countries: Official*, (Feb. 7, 2023), available at <https://www.iranintl.com/en/202302078253>.

<sup>714</sup> See below for discussion on the JCPOA.

<sup>715</sup> U.S. Energy Information Administration, *Iran*, (Nov. 17, 2022), available at <https://www.eia.gov/international/analysis/country/IRN>.

it has drawn significant interest from European and Asian states, including China, India, and Japan.<sup>716</sup>

A transition government may have the potential to revive past global trade agreements and projects that have been stalled or lack full implementation. For example, in September 2000, Iran, India, and Russia established the International North-South Transport Corridor (“INSTC”).<sup>717</sup> Geographically, the INSTC would have connected the Indian Ocean and Persian Gulf to the Caspian Sea through Iran, then go on to connect to Northern Europe through Russia.<sup>718</sup> The purpose of the INSTC was to promote transportation cooperation between its member states, which would facilitate trade between states. Sanctions on Iran and Russia have stalled investment in the INSTC, as the sanctions prevent other states from directly investing in infrastructure in Iran or Russia and limit the funds that Iran and Russia could invest in infrastructure.<sup>719</sup>

### *Coordination with OPEC and OPEC+*

Iran was one of the founding members of the Organization of the Petroleum Exporting Countries (“OPEC”), established in September 1960.<sup>720</sup> In October 2022, OPEC and its allies (including Russia, referred to collectively as “OPEC+”) agreed to cut output by two million barrels per day.<sup>721</sup> Due to the sanctions currently imposed on Iran, Iran is exempt from the OPEC+ cuts.<sup>722</sup> Despite the ongoing sanctions, in 2021, Iran’s oil companies earned about \$40 billion (USD) in net oil export revenues.<sup>723</sup> A lifting of sanctions is likely to result in a lifting of

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<sup>716</sup> Nidhi Verma, Julia Payne, Reuters, *Indian, European refiners get ready to buy Iranian oil*, (Nov. 21, 2019), available at

<https://www.reuters.com/world/india/indian-refiners-set-curb-spot-buying-make-room-iranian-oil-2021-05-19/>.

<sup>717</sup> Asia Regional Integration Center, *International North-South Transport Corridor*, available at

<https://aric.adb.org/initiative/international-north-south-transport-corridor>.

<sup>718</sup> Global Infrastructure Connectivity Alliance, *International North South Transport Corridor*, available at

<https://www.gica.global/initiative/international-north-south-transport-corridor-instc>.

<sup>719</sup> Vaishali Basu Sharma, The Wire, *The Political Economics of the International North-South Transport Corridor*, (June 30, 2022), available at

<https://thewire.in/world/political-economics-international-north-south-transport-corridor-india-iran-russia>.

<sup>720</sup> Organization of the Petroleum Exporting Countries, *Brief History*, available at

[https://www.opec.org/opec\\_web/en/about\\_us/24.htm](https://www.opec.org/opec_web/en/about_us/24.htm).

<sup>721</sup> World Economic Forum, *Explainer: What is OPEC?*, (Nov. 11, 2022), available at

<https://www.weforum.org/agenda/2022/11/oil-opec-energy-price/>.

<sup>722</sup> Alex Lawler, Reuters, *OPEC+ would seek to bring Iran into oil supply deal*, (Feb. 18, 2022), available at

<https://www.reuters.com/business/energy/opec-would-seek-bring-iran-into-oil-supply-deal-2022-02-18>.

<sup>723</sup> U.S. Energy Information Administration, *Iran*, (Nov. 17, 2022), available at

<https://www.eia.gov/international/analysis/country/IRN>.



Iran's exemption from OPEC cuts, which may impact any plans by a transition government to rapidly increase petroleum production or exports.<sup>724</sup>

### *Economy*

Iran's economy currently faces a number of challenges, including high inflation, sanctions, and the deep involvement of state agencies (specifically, the IRGC) in its economy both formally and informally. Yet, these challenges may also be met by using the great potential which is currently present in Iran, including high literacy rates, increasing participation of youth and women in the economy, and maintenance and development of its diversified economy.

Iran's economy is driven by its oil and gas, agricultural, and service sectors.<sup>725</sup> In 2021, Iran's oil companies earned about \$40 billion in net oil exports.<sup>726</sup> Iran has vast oil and gas reserves, holding approximately 24% of oil reserves in the Middle East and 12% in the world.<sup>727</sup> Yet, Iran is distinct from many oil-producing countries, in that it has continued to maintain a relatively diversified economy outside of its oil production possibilities. Investment in sectors outside of oil and gas production should be strongly considered, as such diversification limits the impact that volatility in the oil market may have on the stability of Iran's economy going forward.

Inflation is high in Iran. For much of 2022, Iran's inflation rate was over 50%.<sup>728</sup> High inflation is expected to continue in Iran during the near future, with World Bank estimates expecting its inflation rate to average 44% between 2023 to 2024.<sup>729</sup> Sanctions have also had a widespread impact on nearly every aspect of Iranian life and economy.<sup>730</sup>

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<sup>724</sup> Ben Cahill, Center for Strategic & International Studies, *OPEC Hopes Iran Won't Spoil the Party*, (June 2, 2021), available at <https://www.csis.org/analysis/opec-hopes-iran-wont-spoil-party>.

<sup>725</sup> World Bank, *Islamic Republic of Iran*, (Oct. 20, 2022), available at <https://www.worldbank.org/en/country/iran/overview>.

<sup>726</sup> U.S. Energy Information Administration, *Iran*, (Nov. 17, 2022), available at <https://www.eia.gov/international/analysis/country/IRN>.

<sup>727</sup> U.S. Energy Information Administration, *Iran*, (Nov. 17, 2022), available at <https://www.eia.gov/international/analysis/country/IRN>.

<sup>728</sup> Trading Economics, Iran, <https://tradingeconomics.com/iran/inflation-cpi>.

<sup>729</sup> World Bank Group, *Global Economic Prospects*, (Jan. 2023), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/38030/GEP-January-2023.pdf>, p. 77.

<sup>730</sup> Human Rights Watch, *'Maximum Pressure' US Economic Sanctions Harm Iranians' Right to Health*, (Oct. 29, 2019), available at <https://www.hrw.org/report/2019/10/29/maximum-pressure/us-economic-sanctions-harm-iranians-right-health>.

In 2023, Russia was the largest foreign investor in the Iranian economy, with \$ 2.7 billion (USD) invested.<sup>731</sup>

### Involvement of Office of the Supreme Leader, IRGC, and quasi-governmental (bonyads) in Iran's economy

Iran's economy is heavily dictated by governmental involvement.<sup>732</sup> Government involvement is primarily driven by the IRGC, the Office of the Supreme Leader (*Beit-e Rahbar*), quasi-governmental foundations (*bonyads*), and state-owned entities and agencies (e.g., IRGC Cooperative Foundation, Bonyad-e Mostafzan).<sup>733</sup> Members of the IRGC are distributed throughout each of those government networks, with IRGC members sitting on the boards of important *bonyad*-run companies in nearly all economic sectors.<sup>734</sup> While precise numbers are difficult to determine, it is estimated that between one to two third of Iran's GDP is controlled by the IRGC.<sup>735</sup> The IRGC's dominance over Iran's economy spans multiple sectors and levels, including energy, construction, telecommunication, media, mining, electronics, automobile, banking, nuclear, and more.<sup>736</sup>

A transition government may pursue a range of options to address the previous regime's control over the economy through the IRGC, these options may be described as falling within two options: (i) preserving the IRGC's role and influence (no change); or (ii) reforming or removing the IRGC's role and influence. Due to the significant impact of the IRGC throughout Iran's economy, it is expected that the first option will not be tenable if wider changes to Iran's economic approach are needed. Instead, a transitional government is likely to be tasked with considering how to remove the IRGC's influence from Iran's economy.

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<sup>731</sup> Maziar Motamedi, Al Jazeera, *What's Behind Iran and Russia's efforts to link banking systems?*, (Feb. 8, 2023), available at

<https://www.aljazeera.com/news/2023/2/8/whats-behind-iran-and-russias-efforts-to-link-banking-systems>.

<sup>732</sup> Ebad Ebadi, Priscilla Toffano, *How Do State-Owned Enterprises Adjust During Downturns: Evidence from Iranian Manufacturing Firms*, International Monetary Fund, (Sept. 30, 2022), available at <https://www.imf.org/en/Publications/WP/Issues/2022/09/30/How-Do-State-Owned-Enterprises-Adjust-During-Downturns-Evidence-from-Iranian-Manufacturing-524058>.

<sup>733</sup> Hossein Rassam, *The Iranian Deep State*, A Hoover Institution Essay, (2020), available at [https://www.hoover.org/sites/default/files/research/docs/rassam\\_and\\_vakil\\_webready.pdf](https://www.hoover.org/sites/default/files/research/docs/rassam_and_vakil_webready.pdf), at p. 3.

<sup>734</sup> Iranian Regime: Frauds, Manipulations, Atrocities, Threats, *A Deep Dive into Iranian Bonyads and how they work*, (Oct. 9, 2022), available at <https://www.ifmat.org/10/09/a-deep-dive-into-iranian-bonyads-and-how-they-work/>.

<sup>735</sup> Munqith Daher, *The Iranian Islamic Revolutionary Guards Corps (IRGC) from an Iraqi View - a Lost Role or a Bright Future?*, CSIS, (July 30, 2020), available at <https://www.csis.org/analysis/iranian-islamic-revolutionary-guard-corps-irgc-iraqi-view-lost-role-or-bright-future>.

<sup>736</sup> Ahmad Majidiyar, *IRGC's role in Iran's economy growing with its engineering arm set to execute 40 mega-projects*, MEI, (May 7, 2018), available at <https://www.mei.edu/publications/irgcs-role-irans-economy-growing-its-engineering-arm-set-execute-40-mega-projects>.

Due to the significant role of the IRGC in Iran's economy, removing the IRGC's influence from Iran's economy would require a multifaceted approach that addresses both the structural and political aspects of the issue. This approach should include the following three elements: (i) preserving records of the Ministry of Economic Affairs and Finance and each state-owned enterprises prior to the transition; (ii) establishing a body to transition the state-owned enterprises; and (iii) developing a mechanism to seek damages from individuals who wrongfully appropriated funds from the state during their tenure.

Regarding the first element, depending on the circumstances, the IRGC's removal may lead to: (i) the destruction of important records within the Ministry of Economic Affairs and Finance, as well as in each state-owned enterprise; and (ii) the removal of funds from state-owned accounts or enterprises for the personal use of IRGC members. To the extent possible, a transition may be aided by attempts to preserve records, including: project documents, contracts, meeting minutes, key strategy documents, and bank account information.

Regarding the second element, a body should be established to have oversight and accountability powers over the transition of state-owned enterprises. Such questions may fall under the purview of the Ministry of Economic Affairs and Finance (including the Organization for Collection and Sale of State-Owned Properties of Iran ("OCSSPI"), which operates under the ministry). However, a transitional government should consider whether the transition should be done under the purview of the Ministry or the OCSSPI, or whether a new body should be established to do so. Factors that would lean towards the establishment of a new body include: (i) preventing the influence of the previous regime in the transition process; (ii) developing a temporary body instead of a permanent body that has concentrated economic power; (iii) whether lustration efforts may have impacted the personnel and technical capacity of the Ministry or OCSSPI to undertake this task; and (iv) independence of this body from other Ministry efforts. Factors that would lean towards such a body operating under the Ministry or OCSSPI include: (i) utilizing already existing personnel and technical capacity; (ii) developing the technical capacity of the Ministry or OCSSPI in the long-term; and (iii) increasing coordination between transition plans for state-owned enterprises and other economic plans of the transition government.

In the case that a temporary body to aid in the transition of state-owned enterprises may be preferred, such a body could function similar to the *Treuhandanstalt*, which was used during the reunification of West and East Germany, to re-privatize and privatize certain enterprises. Even prior to taking power, a transitional government may establish a precursor to this body which considers key questions, including: whether and which state-owned enterprises should be maintained under the control of the state, and which should be privatized; which existing

industry regulations should be retained or updated; and which persons should be retained or removed from being involved in the operations of a state-owned enterprise. Any efforts to privatize should be mindful not to replicate the approach of the 1991 privatization organization of Iran (*sazman khosoisazi Iran*), which was tasked with privatizing Iranian state-owned companies, but was itself strife with corruption. *Sazman khosoisazi Iran*'s process led not to an egalitarian approach to privatization, but of privatization for the benefit of those with links to the government and clergy.<sup>737</sup>

Regarding the third element, the development of a mechanism to seek damages from those who wrongfully appropriated funds may consider using: (i) an integrated approach built into a truth or justice commission; and (ii) in the interim, seeking the aid of international partners to freeze accounts of individuals who may have misappropriated funds. A recent example of an integrated approach to seeking damages can be found in The Gambia's Truth, Reconciliation, and Reparations Commission, which was established after The Gambia's former President, Yahya Jammeh, fled the state in January 2017 after losing elections. This commission was established under the purview of the Ministry of Justice in 2017 and conducted a series of interviews and investigations as part of a truth seeking process. Of relevance, the commission collected significant volumes of data on transactions made by political leaders of The Gambia, the President himself, relevant bank accounts, properties, and the management of state-owned enterprises.<sup>738</sup>

Since establishing and completing such a process may take time, interim steps should also be taken to coordinate the freezing of assets and accounts of individuals who have misappropriated funds from the Iranian economy. Due to the high-level of existing sanctions imposed on Iran, many states have already identified key figures of the IRGC and many Iranian state-owned enterprises in their sanctions lists. For example, the United States has previously imposed sanctions on the Supreme Leader, several *bonyads*, as well as key figures of those *bonyads*.<sup>739</sup> A transitional government may choose to capitalize on these existing frameworks to help track the assets and accounts of such persons, with the goal of repatriating any misappropriated public funds.

### Incorporating or Revising Existing Economic Plans

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<sup>737</sup> Akbar E. Tort, *Problems of Economic Liberalization in Iran, Topics in Middle Eastern and African Economies*, (May 2020), available at <http://mee.sites.luc.edu/volume22/PDFs/Torbat%20final.pdf>.

<sup>738</sup> Attorney General's Chambers & Ministry of Justice for The Gambia, *Janneh Commission Reports*, (2019), available at <https://www.moj.gm/downloads>.

<sup>739</sup> U.S. Department of The Treasury, Treasury Targets Billion Dollar Foundations Controlled by Iran's Supreme Leader, (Jan. 13, 2021), available at <https://home.treasury.gov/news/press-releases/sm1234>.

A transitional government should consider whether and how to transition specific economic plans and policies that have been established by the Iranian government. Which plans should be prioritized or eliminated will largely depend on the policy goals of the transitional government. Even prior to transition, a commission or commissions could be established to review and identify this priority. The commission may also consider whether to establish or continue existing plans in a range of sectors, including:

- Supporting or amending existing subsidy reform efforts: In December 2010, Iran implemented a subsidy reform program on both energy and bread. While the subsidy reform was initially successful, its success began to decline as energy prices dropped and high inflation eroded public support for the program.<sup>740</sup> As inflation continues to rise, there are increasing calls for reform of the subsidy reform program.
- Supporting Iran's role as a trade hub: Iran is positioned in a geographically advantageous space. Developing its ports, airspace, and borders to facilitate such trade may help stimulate local economies to support such trade. This would include the prioritization and development of both primary and service sector jobs to support such activities.
- Maintaining and supporting development of renewable energy: Iran may take steps to develop its renewable energy sector, including hydropower, wind power, solar, nuclear, and geothermal power sources. Increasing investment in renewable energy sources have previously garnered support even during the current regime.<sup>741</sup>
- Maintaining and supporting agriculture investment: Iran is a significant exporter of fruits and vegetables.<sup>742</sup> In 2021, Iran exported \$6.5 billion in agricultural products. However, recent years have seen agricultural decline, with several states rejecting Iranian agricultural products over safety concerns.<sup>743</sup>
- Maintaining and increasing its relationship with the global Islamic finance community: Iran is the largest center of Islamic banking.<sup>744</sup> Due to this, it has significant potential to increase investment and benefit from participation in global Islamic finance, but may face

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<sup>740</sup> Djavad Salehi-Isfahani, *Iran's Subsidy Reform: From Promise to Development*, Economic Research Forum, (June 2014), available at <https://erf.org.eg/publications/irans-subsidy-reform-from-promise-to-disappointment/>.

<sup>741</sup> Eric Wheeler, Michael Desai, *Iran's Renewable Energy Potential*, MEI, (Jan. 26, 2016), available at <https://www.mei.edu/publications/irans-renewable-energy-potential>.

<sup>742</sup> Tehran Times, *Iran among world's top agro-food exporters in 2021: FAO*, (Jan. 7, 2023), available at <https://www.tehrantimes.com/news/480539/Iran-among-world-s-top-agro-food-exporters-in-2021-FAO>.

<sup>743</sup> Babak Dashti, *Several countries reject Iran's exported produce, raising concerns for domestic use*, Al-Mashareq, (Feb. 1, 2022), available at [https://almashareq.com/en\\_GB/articles/cnmi\\_am/features/2022/02/01/feature-02](https://almashareq.com/en_GB/articles/cnmi_am/features/2022/02/01/feature-02).

<sup>744</sup> Jacopo Dettoni, *Iran and the Islamic Finance Crown*, The Diplomat, (June 16, 2015), available at <https://thediplomat.com/2015/06/iran-and-the-islamic-finance-crown/>.

difficulties transacting with global Islamic financing institutions due to divergences in Shia and Sunni interpretations of Islamic financing principles.<sup>745</sup> Currently, Iranian banks (Bank Keshavarzi, Bank Saderat Iran) are members of the General Council for Islamic Banks and Financial Institutions.<sup>746</sup> Iran is also a member of the Islamic Development Bank.

- Increasing the number of employed individuals in Iran's population. A transitional government should consider the demographic and potential of Iran's population, which benefits from having high numbers of youth and literacy throughout the population. In 2022, Iran was estimated to have an 11.46% unemployment rate, with an estimated 18.96% of Iran's female labor force unemployed.<sup>747</sup> This unemployment rate, coupled with the higher unemployment rate for women, represents an opportunity in increasing economic participation of women in the labor force. A transitional government may consider any existing or in-progress approaches to implement the United Nations Sustainable Development Goals ("SDGs"),<sup>748</sup> which include a goal to "[a]chieve gender equality and empower all women and girls." Noting that at time of writing, the current government's statement that they were taking efforts to implement the SDGs is unverified.<sup>749</sup>

### Foreign Direct Investment

Internally, Iran's leaders frequently refer to its economy as a 'resistance economy.' This refers to the notion that Iran's economy is acting in resistance to the significant global sanctions that have been opposed against it.<sup>750</sup> For this reason, foreign direct investment in Iran is limited relative to its full potential.

Increasing or allowing foreign direct investment may be done holistically across the economy, sector-by-sector, or situation-by-situation. Foreign investment carries certain benefits (e.g., promotion of economic growth, increase in exports, improved capital flow into a state, and

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<sup>745</sup> Jacopo Dettoni, *Iran and the Islamic Finance Crown*, The Diplomat, (June 16, 2015), available at <https://thediplomat.com/2015/06/iran-and-the-islamic-finance-crown/>.

<sup>746</sup> General Council for Islamic Banks and Financial Institutions, *CIBAFI Members*, available at <https://www.cibafi.org/CIBAFIMembers>.

<sup>747</sup> World Bank Indicators, *Data*, available at <https://data.worldbank.org/indicator/SL.UEM.TOTL.FE.ZS?view=map>.

<sup>748</sup> Maryam Sinaee, *Women's Declining Economic Role Key Factor in Iran Unrest*, (Jan. 31, 2023), available at <https://www.iranintl.com/en/202301316482>.

<sup>749</sup> Maryam Sinaee, *Women's Declining Economic Role Key Factor in Iran Unrest*, (Jan. 31, 2023), available at <https://www.iranintl.com/en/202301316482>.

<sup>750</sup> Amir Toumaj, *Iran's Economy of Resistance*, A Report by the Critical Threats Project of the American Enterprise Institute (Nov. 2015), available at [https://relooney.com/NS3040/000\\_New\\_1924.pdf](https://relooney.com/NS3040/000_New_1924.pdf).

creation of a competitive market).<sup>751</sup> Yet, foreign direct investment also carries certain risks (e.g., limiting the benefits to domestic investors, increasing foreign interference in domestic affairs, and the flow of wealth out of a state).<sup>752</sup> Decisions on whether and how to encourage foreign direct investment in a state are specific and multifaceted.

### International Investment Agreements

As a whole, establishing and entering into international investment agreements (“IIAs”) is a typical manner to increase foreign investment in a state. IIAs include bilateral and multilateral investment treaties that are entered into between states to protect foreign investors. These IIAs typically increase foreign investment by providing foreign investors with assurances of protection and legal recourse if such protections are not upheld. Iran has already entered into and maintained a number of IIAs that protect Iranian investors as well as foreign investors investing in Iran.<sup>753</sup> If Iran moves to allow more widespread foreign investment, certain of these IIAs may need to be reevaluated or refocused. The treatment of foreign investors and the terms of these IIAs are important to any efforts to restrict foreign ownership in certain companies. For example, if a transitional government wanted to take steps to consider foreign investment in natural resources. Here, the terms of an IIA would impact both mechanisms to restrict foreign ownership of any such companies, as well as mechanisms to regulate (including tax) such companies differently than local companies.

### *Considerations on Trade & Economy for a Transitional Government*

With regards to trade and economy, a transitional government will need to consider its approach to balancing its domestic economic interests along with developing its approach to foreign investment and trade. A transitional government may consider:

- Conducting a review of interested trade partners in light of the transitional government’s policies and approach to international trade (e.g., whether Iran should pursue WTO membership).

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<sup>751</sup> Bruce Takefman, *16 Advantages and Disadvantages of Foreign Direct Investment*, Research FDI, (Mar. 11, 2021), available at <https://researchfdi.com/resources/articles/foreign-direct-investment-advantages-disadvantages/>.

<sup>752</sup> Prakash Loungani, Assaf Razin, *How Beneficial is Foreign Direct Investment for Developing Countries*, International Monetary Fund, (June 2001), available at <https://www.imf.org/external/pubs/ft/fandd/2001/06/loungani.htm>.

<sup>753</sup> This includes, amongst others, BITs with China, France, Pakistan, and Russia. See United Nations Conference on Trade and Development, *Iran, Islamic Republic of*, available at <https://investmentpolicy.unctad.org/international-investment-agreements/countries/98/iran-islamic-republic-of>.

- Conducting a review and developing a strategy of Iran's key sectors (e.g., hydrocarbons) and entering into trade proposals that manage these sectors in a sustainable manner.
- Conducting a review of past trade agreements and projects, with an emphasis on reviving or revising those agreements that are viable.
- Anticipating and understanding how the lifting of sanctions may affect existing sectors (e.g., lifting of sanctions may affect Iran's exemption from OPEC limits on oil production).
- The involvement of the public sector (including the Office of the Supreme Leader, IRGC, and *bonyads*) throughout Iran's economy. This may include considering:
  - The extent and scope of the involvement of public bodies in Iran's private economy;
  - The potential for the public sector to resist economic changes that align with a transition government's new policies;
  - Preserving records of the Ministry of Economic Affairs and Finance, as well as relevant state-owned enterprises, prior to the transition.
  - Establishing a body or procedure to facilitate the transition of state-owned enterprises.
  - Developing a mechanism to seek damages from individuals who wrongfully appropriated funds from the state during their tenure.
- Incorporating or revising existing economic plans, including:
  - Supporting or amending existing subsidy reform efforts;
  - Developing Iran as a trade hub;
  - Supporting agricultural investment in Iran;
  - Its relationship with the global Islamic finance community; and
  - Addressing high unemployment in Iran's labor force, especially amongst Iran's women.
- Managing foreign investment in a careful manner, by considering whether foreign direct investment should be done holistically across the entire economy, sector-by-sector, or situation-by-situation. This involves a consideration of:
  - Whether the advantages of foreign investment outweigh the benefit of seeking such funds from the domestic private or public sector;
  - Whether existing international investment agreements entered into by Iran are aligned with the transition government's agenda and goals; and
  - Whether any new international investment agreements should be established, or past international investment agreements should be reconsidered, especially as the lifting of sanctions may lead to an influx of foreign investment into the country.
- Consideration of the current transparency or lack thereof, pertaining to financial and economic institutions.
- How to facilitate sustainable development that is based on good governance.



## International Relations

Iran's approach to international relations is grounded in a rejection of foreign interference and preservation of its own independence. Iran's approach to international relations is deeply interlinked with its history, in particular, an ongoing caution of foreign interference that stems from the UK and US interference in the 1953 coup.<sup>754</sup> This approach is included within Iran's constitution, which defines its approach to foreign policy as one that rejects all forms of foreign control or domination, while also seeking to preserve the non-alignment of Iran. Specifically, Iran's constitution provides that:

- The foreign policy of Iran is based upon the rejection of all forms of domination, the preservation of the independence of Iran and its territorial integrity, the defense of the rights of all Muslims, non-alignment with hegemonist superpowers, and the maintenance of mutually peaceful relations with all non-belligerent states;<sup>755</sup>
- Any form of agreement resulting in foreign control over the natural resources, economy, army, or culture of the country, as well as other aspects of the national life, is forbidden;<sup>756</sup> and
- The attainment of independence, freedom and rule of justice and truth to be the right of all people of the world. Accordingly, while scrupulously refraining from all forms of interference in the internal affairs of other nations, it supports the just struggles of the *mustad'afun* (oppressed) against the *mustakbirun* (oppressor) in every corner of the globe.<sup>757</sup>

These constitutional provisions serve as the basis for much of Iran's approach to international relations, including a continuing suspicion of Western interference in its domestic affairs. These provisions also serve as the basis for a range of approaches to international relations, which may appear to overlap or contradict one another, depending on the commentator.

### *Transitional Justice and International relations*

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<sup>754</sup> Lawrence Wu, Michelle Lanz, *How the CIA Overthrew Iran's Democracy in Four days*, National Public Radio, (Feb. 7, 2019), available at <https://www.npr.org/2019/01/31/690363402/how-the-cia-overthrew-irans-democracy-in-four-days>.

<sup>755</sup> Constitution of Iran, (1989), available at [https://www.constituteproject.org/constitution/Iran\\_1989.pdf](https://www.constituteproject.org/constitution/Iran_1989.pdf), Art. 152.

<sup>756</sup> Constitution of Iran, (1989), available at [https://www.constituteproject.org/constitution/Iran\\_1989.pdf](https://www.constituteproject.org/constitution/Iran_1989.pdf), Art. 153.

<sup>757</sup> Constitution of Iran, (1989), available at [https://www.constituteproject.org/constitution/Iran\\_1989.pdf](https://www.constituteproject.org/constitution/Iran_1989.pdf), Art. 154.

Engaging in transitional justice efforts may play an important role in a state's foreign policy approach. As discussed above, transitional justice may serve to provide a state's citizens with redress for past political injustices, in order to restore political order. In this way, the redress and political order that is offered by transitional justice is often viewed through a domestic lens. Yet, as transitional justice efforts are undertaken domestically, they may also affect the approach to international relations in a more tangible way. This may occur through a number of manners:

- The transitional government may itself have different goals and approaches to international relations, this may require the reconsideration of previous stances;
- Such reconsideration of previous stances may require an approach to revise, amend, or develop new stances;
- A certain accountability process makes certain approaches less feasible or viable (e.g., if certain states push for the IRGC to be sanctioned, but the transitional government chooses not to hold the IRGC accountable, it may create tension for approach requiring strong cooperation with those states);
- The international community may be called upon to take action against individuals or entities for their wrongdoing; or
- The international community may be asked to help support domestic transitional justice mechanisms, through funding or technical assistance.

A state's approach to transitional justice internally is interlinked with its approach to communicating its stance in international relations. For example, Russia's transitional justice efforts post-Soviet era are seen as having provided symbolic representational acknowledgment of victims. Yet, domestic efforts largely ignored punishing the perpetrators of political repression and gross human rights violations. Certain commentators consider Russia's ignoring of such violations on a domestic level to translate into 'strategic silence' of such violations on an international level.<sup>758</sup>

Russia's silence may be contrasted against Germany's efforts to address its past, both domestically and internationally. Germany has taken efforts to package its foreign policy regarding the Holocaust beyond just voicing its transitional justice efforts and its outcomes. Rather, Germany undertakes transitional justice efforts that go on to support transitional justice in other states, including through the provision of finances, knowledge transfer, and technical expertise.<sup>759</sup>

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<sup>758</sup> Maria Mälksoo, *The Transitional Justice and Foreign Policy Nexus: The Inefficient Causation of State Ontological Security-Seeking*, (Sept. 3, 2019), available at <https://academic.oup.com/isr/article/21/3/373/4959061>.

<sup>759</sup> Mariam Salehi, *Transitional Justice as a Foreign Policy Issue across the Atlantic: Policy Issue across the Atlantic: Trends and Counter-trends*, American Institute for Contemporary German Studies (Aug. 15, 2019), available at

## *Iran's Recent Approach to International Relations*

Iran's approach to international relations differs among key actors and groups. The Supreme Leader of Iran, Ali Hosseini Khamenei is understood to take a more hardline approach against foreign interference in Iran. Khamenei is constitutionally the Commander-in-Chief of Iran's armed forces, including the IRGC.<sup>760</sup> Other leaders, including former President Hassan Rouhani, support a more balanced approach to foreign involvement.<sup>761</sup> Iran's approach to international relations is interlinked with its approach to its domestic affairs, with Iranian officials citing foreign interference as the cause of any civil unrest and opposition to the regime.<sup>762</sup>

In recent years, Iran's international relations has shown an interest towards increased partnership with non-Western partners, including Russia, China, and India.<sup>763</sup> In 2018, Iran signed the Convention on the legal status of the Caspian Sea with Azerbaijan, Kazakhstan, Russia, and Turkmenistan.<sup>764</sup> In 2021, Iran signed a 25-year Cooperation Accord with China to boost bilateral trade.<sup>765</sup> While China has previously supported sanctions against Iran, in February 2023, China called for the lifting of US sanctions against Iran.<sup>766</sup>

Iran has recently also shown interest in bettering its relationship with its regional neighbors. During 2021 to 2022, Iran participated in mediated talks in Iraq with Saudi Arabia, which came to a halt in December 2022, after Iranian officials alleged that Saudi Arabia played a role in inciting the ongoing civil unrest in Iran.<sup>767</sup> In March 2023, Iran and Saudi Arabia agreed

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<https://www.aicgs.org/publication/transitional-justice-as-a-foreign-policy-issue-across-the-atlantic-trends-and-counter-trends/>.

<sup>760</sup> Congressional Research Service, *Iran's Foreign and Defense Policies*, (Jan. 11, 2021), available at <https://sgp.fas.org/crs/mideast/R44017.pdf>, p. 3.

<sup>761</sup> Congressional Research Service, *Iran's Foreign and Defense Policies*, (Jan. 11, 2021), available at <https://sgp.fas.org/crs/mideast/R44017.pdf>, p. 3.

<sup>762</sup> Associated Press, *Saudi-Iran talks said to have stalled over protests in Iran*, (Dec. 19, 2022), available at <https://apnews.com/article/iran-iraq-tehran-976f8fe3ffd9653acd42651092dad7e8>.

<sup>763</sup> Rajeev Agarwal, *The Iranian foreign minister's visit to India may signal a rethink of the relationship*, *The Diplomat*, (June 11, 2022), available at <https://thediplomat.com/2022/06/india-iran-ties-are-ripe-for-a-reset/>.

<sup>764</sup> Convention on the Legal Status of the Caspian Sea, (Aug. 12, 2018), available at <http://en.kremlin.ru/supplement/5328>.

<sup>765</sup> Deutsche Welles, *Iran, China sign 'strategic' deal in Tehran*, (March 27, 2021), available at <https://www.dw.com/en/iran-china-sign-strategic-deal-in-tehran/a-57025741>.

<sup>766</sup> Iran International, *China's Xi to Visit Iran, Calls for Lifting US Sanction*, (Feb. 16, 2023), available at <https://www.iranintl.com/en/202302167484>.

<sup>767</sup> Associated Press, *Saudi-Iran talks said to have stalled over protests in Iran*, (Dec. 19, 2022), available at <https://apnews.com/article/iran-iraq-tehran-976f8fe3ffd9653acd42651092dad7e8>.

to resume diplomatic ties, with the help of China.<sup>768</sup> In April 2023, Saudi Arabia and Iran took further steps, by agreeing to reopen embassies in each other's capitals.<sup>769</sup>

The following issues play an important role in Iran's international relations and therefore shall be discussed separately.

### Iran's Nuclear Program

In July 2015, Iran and several other world powers (including, China, France, Germany, Russia, UK, and US) reached an agreement on Iran's nuclear program, referred to as the Joint Comprehensive Plan of Action ("JCPOA").<sup>770</sup> Under the JCPOA, Iran agreed to dismantle most of its nuclear program and open its nuclear facilities to inspection in exchange for relief from sanctions.<sup>771</sup> In 2018, the former US President, Donald Trump, withdrew the US from the JCPOA.<sup>772</sup> In 2020, in response to the U.S. departure from the JCPOA as well as U.S. attacks on prominent Iranians, Iran resumed some of its nuclear program.<sup>773</sup> While current U.S. President Joe Biden has signaled that the U.S. would re-enter the JCPOA if Iran came into compliance with the terms of the JCPOA,<sup>774</sup> negotiations to re-establish Iran's participation in the JCPOA have been unsuccessful and are ongoing as of February 2023. This is an evolving issue, with occasional reports of interest by the United States and the European Union in an interim deal.<sup>775</sup> At least as of April 2023, Iranian authorities were denying interest in an interim deal, but Iran's Foreign Minister did signal that they were "on the track to constructive cooperation between Iran and the [International Atomic Energy Agency]" and that Iran would continue to cooperate with the International Atomic Energy Agency at a technical level.<sup>776</sup>

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<sup>768</sup> Jon Gambrell, *Iran, Saudi Arabia agree to resume ties, with China's help*, AP News, (Mar. 11, 2023), available at <https://apnews.com/article/saudi-arabia-iran-diplomatic-ties-2f80bb71a995910cb4b172e5dbec3526>.

<sup>769</sup> Amna Nawaz, Dan Sagalyn, Teresa Cebrian Aranda, *What's next for Iran and Saudi Arabia as nations take major step toward reconciliation*, PBS News Hour, (Apr. 6, 2023), available at <https://www.pbs.org/newshour/show/whats-next-for-iran-and-saudi-arabia-as-nations-take-major-step-toward-reconciliation>.

<sup>770</sup> JCPOA, (July 15, 2015), available at <https://2009-2017.state.gov/documents/organization/245317.pdf>.

<sup>771</sup> JCPOA, (July 15, 2015), available at <https://2009-2017.state.gov/documents/organization/245317.pdf>.

<sup>772</sup> Kali Robinson, Council on Foreign Relations, *What is the Iran Nuclear Deal*, (July 20, 2022), available at <https://www.cfr.org/background/what-iran-nuclear-deal>.

<sup>773</sup> Kali Robinson, Council on Foreign Relations, *What is the Iran Nuclear Deal*, (July 20, 2022), available at <https://www.cfr.org/background/what-iran-nuclear-deal>.

<sup>774</sup> Kali Robinson, Council on Foreign Relations, *What is the Iran Nuclear Deal*, (July 20, 2022), available at <https://www.cfr.org/background/what-iran-nuclear-deal>.

<sup>775</sup> <https://responsiblestatecraft.org/2023/02/07/can-an-interim-deal-break-the-iran-nuclear-impasse/>.

<sup>776</sup> Ali Hashem, *Iran rules out interim nuclear deal*, Al Monitor, (Apr. 5, 2023), available at <https://www.al-monitor.com/originals/2023/04/iran-rules-out-interim-nuclear-deal>.

## Financial Action Task Force

The Financial Action Task Force (“FATF”) is an inter-state organization that establishes guidelines and global standards to tackle money laundering, terrorist, and proliferation financing.<sup>777</sup> Iran is currently blacklisted by the FATF, having failed to sign onto required international agreements and take steps to implement the FATF’s standards. The impact of the FATF blacklisting is debated. Certain commentators have noted that this blacklisting is largely symbolic in light of existing sanctions.<sup>778</sup> Yet, others signal that the FATF blacklisting may have widespread effects, as in the event sanctions are lifted, many global banks may be unwilling to transact with Iran.<sup>779</sup>

Iran’s placement on the FATF blacklist and any movement to enter into compliance with FATF standards will need to be weighed in light of Iran’s existing stances on providing funds to external actors. Officially, the FATF has placed Iran on the FATF as it is “concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system.”<sup>780</sup>

Complying with the FATF’s standards will require, in part: (1) adequately criminalizing terrorist financing, including by removing the exemption for designated groups “attempting to end foreign occupation, colonialism and racism;” (2) identifying and freezing terrorist assets in line with the relevant United Nations Security Council resolutions; (3) ensuring an adequate and enforceable customer due diligence regime; (4) demonstrating how authorities are identifying and sanctioning unlicensed money/value transfer service providers; (5) ratifying and implementing the Palermo and TF Conventions and clarifying the capability to provide mutual legal assistance; and (6) ensuring that financial institutions verify that wire transfers contain complete originator and beneficiary information.<sup>781</sup> While each of these requirements will require careful consideration, the most relevant to international relations are the first two, which relate to Iran’s provision of funds to certain groups that have been designated as terrorists by United Nations Security Council Resolutions.

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<sup>777</sup> Financial Action Task Force, *What We Do*, available at <https://www.fatf-gafi.org/en/the-fatf/what-we-do.html>.

<sup>778</sup> Brian O’Toole, *FATF blacklists Iran, but does it matter?*, Atlantic Council, available at <https://www.atlanticcouncil.org/blogs/iransource/fatf-blacklists-iran-but-does-it-matter/>.

<sup>779</sup> Iran International, *Nuclear Deal Not Enough For Iran’s Trade Without FATF Accession*, (Mar. 17, 2022), available at <https://www.iranintl.com/en/202203175586>.

<sup>780</sup> Financial Action Task Force, *High-Risk Jurisdictions subject to a Call for Action*, (Feb. 21, 2020), available at [fatf-gafi.org/en/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html#fn1](https://www.fatf-gafi.org/en/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html#fn1).

<sup>781</sup> Financial Action Task Force, *High-Risk Jurisdictions subject to a Call for Action*, (Feb. 21, 2020), available at <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-february-2020.html>.

Iran's approach to complying with FATF guidelines is likely to influence its relationship with other entities in the region, including: Afghanistan, Iraq, Lebanon, Palestine, Saudi Arabia, Syria, and Yemen. Iran's history and practice of funding designated terrorist groups (largely, Shiite groups) in the region has resulted both in support and friendships,<sup>782</sup> as well as increased tensions.<sup>783</sup> Iran's March 2023 steps to re-establish diplomatic ties with Saudi Arabia, which is seen as a major source of funding of contrasting Sunni groups,<sup>784</sup> may provide a basis to lay a framework for Iran's financing to be reconsidered while still maintaining its interests.

### Abraham Accords

In September 2020, the Abraham Accords, a joint peace agreement between Bahrain, Israel, United Arab Emirates, and the United States, were signed.<sup>785</sup> The Abraham Accords represent a significant step towards the normalization of diplomatic relations between the United Arab Emirates towards Israel, making it the first Persian Gulf state to normalize relations with Israel and the third Arab state (following Egypt in 1979 and Jordan in 1994).<sup>786</sup>

The Abraham Accords were established as an opposition towards Iran and Arab states that support the Palestinian cause, with the U.S. Secretary of state, Mike Pompeo, stating that the Abraham Accords "tell malign actors like the Islamic Republic of Iran that their influence in the region is waning and that they are ever more isolated and shall forever be until they change their direction."<sup>787</sup> A transitional government will need to carefully navigate these international tensions alongside domestic sentiments, which are divided in their perception of Israel.<sup>788</sup>

### Russia

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<sup>782</sup> Karam Shaar, Ali Fathollah-Nejad, *Iran's credit line to Syria: A well that never runs dry*, Atlantic Council, (Feb. 10, 2020), available at

<https://www.atlanticcouncil.org/blogs/iransource/irans-credit-line-to-syria-a-well-that-never-runs-dry/>.

<sup>783</sup> Scott Worden, USIP Staff, *Iran and Afghanistan's Long, Complicated History*, (June 14, 2018), available at <https://www.usip.org/publications/2018/06/iran-and-afghanistans-long-complicated-history>; Adam Baron, *Yemen - Middle East Battle Lines*, European Council on Foreign Relations, (May 2018), available at [https://ecfr.eu/special/battle\\_lines/yemen](https://ecfr.eu/special/battle_lines/yemen).

<sup>784</sup> Zalmay Khalilzad, *'We Misled You': How the Saudis Are Coming Clean on Funding Terrorism*, Politico, (Sept. 14, 2016), available at <https://www.politico.com/magazine/story/2016/09/saudi-arabia-terrorism-funding-214241/>.

<sup>785</sup> US Department of State, *The Abraham Accords Declaration*, (Sept. 20, 2022), available at <https://www.state.gov/the-abraham-accords/>.

<sup>786</sup> Ann M. Callahan, *The Abraham Accords and future prospects*, Universidad de Navarra: Global Affairs, available at <https://www.unav.edu/web/global-affairs/regiones/the-abraham-accords-and-future-prospects-2>.

<sup>787</sup> Maayan Lubell, Reuters, (Nov. 18, 2020), available at <https://www.reuters.com/article/idUSKBN27Y0LT>.

<sup>788</sup> In a 2021 survey of 20,097 Iranians living within Iran, 35% of Iranians had a positive view of Iran compared to 48% having a negative view. See Ammar Maleki, Pooyan Tamimi Arab, *The Group for Analyzing and Measuring Attitudes in Iran (GAMAAN)*, (Oct. 2021), available at

<https://gamaan.org/wp-content/uploads/2021/10/GAMAAN-IR-Survey-English-Report-Final.pdf>, p. 1.

Following Russia's February 2022 invasion of Ukraine, a number of western states (including EU member states, UK, US, and Canada) condemned Russia's actions and imposed a series of sanctions against Russia. Iran and Russia have increased cooperation with both military, intelligence, and economic efforts. Militarily, Iran has already provided Russia with drones to support Russia's war in Ukraine.<sup>789</sup> Regarding intelligence efforts, in August 2022, Russia agreed to launch an Iranian satellite into orbit, with U.S. intelligence officials suspecting that the Iranian satellite is parked over Ukraine and is being used to gather intelligence for Russia.<sup>790</sup> Economically, in February 2023, Iran and Russia took steps to link their financial systems to allow for the flow of funds between the two states.<sup>791</sup>

Iran's efforts to engage with Russia, in particular its provision of drones, is seen by western states as a sign of increasing Russian-Iranian cooperation which is likely to complicate any future diplomatic efforts with these states.<sup>792</sup> There is internal division within Iran on whether Russia can be seen as a sufficiently reliable partner or whether a relationship with Russia should be approached with caution in favor of developing relationships with western states.<sup>793</sup> Russia has had a history of supporting sanctions against Iran.<sup>794</sup> Iran's current sentiments on this divide is captured in a March 2022 statement made by Iran's current Secretary of the Supreme National Security Council of Iran, Ali Shamkhani: "40 [years] of experience has taught our people that relying on Western or Eastern powers will neither guarantee our rights nor our security."<sup>795</sup>

## Israel

As for Iran's international relations in the Middle East, it is important to stress Iran's hostile relations with Israel which are particularly important as they greatly affect regional peace and stability. With the exception of the rather calm period under the Pahlavi dynasty (1953-1979), relations between Iran and Israel have never been friendly, especially following the

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<sup>789</sup> Robbie Gramer, Foreign Policy, *Iran and Russia are Closer Than Ever Before*, (Jan. 5, 2023), available at <https://foreignpolicy.com/2023/01/05/iran-russia-drones-ukraine-war-military-cooperation>.

<sup>790</sup> Robbie Gramer, Foreign Policy, *Iran and Russia are Closer Than Ever Before*, (Jan. 5, 2023), available at <https://foreignpolicy.com/2023/01/05/iran-russia-drones-ukraine-war-military-cooperation>.

<sup>791</sup> Maziar Motamedi, Al Jazeera, *What's Behind Iran and Russia's efforts to link banking systems?*, (Feb. 8, 2023), available at <https://www.aljazeera.com/news/2023/2/8/whats-behind-iran-and-russias-efforts-to-link-banking-systems>.

<sup>792</sup> Robbie Gramer, Foreign Policy, *Iran and Russia are Closer Than Ever Before*, (Jan. 5, 2023), available at <https://foreignpolicy.com/2023/01/05/iran-russia-drones-ukraine-war-military-cooperation>.

<sup>793</sup> Faezeh Foroutan, European Council on Foreign Relations, *Suspicious bind: Iran's relationship with Russia*, (Sept. 2, 2022), available at <https://ecfr.eu/article/suspicious-bind-irans-relationship-with-russia>.

<sup>794</sup> Alexander A. Pikayev, Middlebury Institute of International Studies at Monterey, (June 23, 2010), available at <https://nonproliferation.org/why-russia-supported-sanctions-against-iran/>.

<sup>795</sup> Ali Shamkhani, Twitter, (Mar. 13, 2022), available at [https://twitter.com/alishamkhani\\_ir/status/1503047169523257354](https://twitter.com/alishamkhani_ir/status/1503047169523257354).

1979 Islamic Revolution. Since then, Iran has severed all diplomatic and commercial ties with Israel and has not recognized it as a sovereign state. Importantly, since the '80s, tensions between the two escalated into the ongoing proxy war. Israel has conducted several covert operations in Iran and has supported military groups that aim to overthrow the regime, whereas Iran has supported Hamas and Hezbollah, which have orchestrated several violent attacks against Israel in response to Israeli wars on Gaza in 2014 and post October 7, 2023. The proxy war between the two countries has affected several countries including Palestine, Yemen, Lebanon, and Syria.

### *Considerations on International Relations for a Transition Government*

With regards to international relations, a transitional government will need to consider Iran's historical approach to international relations, the history of foreign interference in the domestic affairs of Iran, and the approach to international relations reflected in Iran's constitution. A transitional government may consider:

- Whether and how Iran will incorporate existing international norms or laws into transitional justice mechanisms.
  - International support should also be clearly defined by achievable objectives, including through mechanisms to ensure effective implementation.
- Whether the transitional government's approach to international relations aligns with Iran's existing constitution, or whether it will require a constitutional amendment.
- Whether and how the goals of the transition government align with the previous government, and whether any previous stances should be reconsidered. This may include considering:
  - Whether and how Iran should negotiate re-entry into the Joint Comprehensive Plan of Action ("JCPOA");
  - Whether and how Iran should enter into compliance with the standards of the Financial Action Task Force ("FATF");
  - Whether and how Iran should address the Abraham Accords, which were established as an opposition towards Iran and Arab states that support the Palestinian cause; and
  - Whether and how Iran should approach its relationship with Russia, in light of ongoing tensions caused by Russia's war in Ukraine.
- Whether and how the goals of the transitional government should be reflected in revised, amended, or entirely new approaches to international relations. This may include considering:



- Whether and how any previously existing relationships with other states may be revived (e.g., Iran's April 2023 resumption of a diplomatic relationship with Saudi Arabia).
- Whether support from international partners are aligned with objectively democratic goals - to provide support in a way that does not serve their interests, such interests should be linked to an independent democratic transitional process and not purely economic or political interests.
- Whether the transitional government's proposed approach to accountability for certain actors makes certain approaches less feasible or viable.
- Whether and how the international community may aid in holding actors accountable for their wrongdoing (e.g., through the establishment of an international tribunal or court).
- Whether and how the international community may support domestic transitional mechanisms (e.g., through funding or technical assistance).

## ANNEX 1 - Case Studies

### *Afghanistan Case Study*

#### The Bonn Conference, the 2004 Constitution, and a Flawed Electoral System

Following the U.S.-led invasion in 2001 and the subsequent unraveling of the Taliban regime, major Afghan factions were invited to the Bonn Conference to decide on a transitional plan for governing the country. In particular, representatives from four political factions were invited to the negotiations – the Northern Alliance and factions organized around exiles based in Rome (with ties to the ex-King), Cyprus (with ties to Iran), and Peshawar (predominantly Pashtun based).<sup>796</sup>

The Taliban were excluded from the conference, as well as representatives from Afghan civil society. One common critique of the Bonn Conference is that the Taliban were excluded. It is thought to have ultimately given the Taliban no choice but to sustain violent conflict and to seek support from Pakistan, as their only avenue to gain any voice.<sup>797</sup> Notably, at that time, there were still continued hostilities in Afghanistan, even if the Taliban and Al Qaeda were in hiding, which perhaps would make such participation not particularly feasible. Nevertheless, it was an implicit condition from the U.S. that the Taliban would not participate in any negotiations, a decision that has later been referred to as the “original sin” that undermined the post-war order.<sup>798</sup>

During the conference, some factions of the Northern Alliance proposed to adopt a more decentralized system of governance, which they believed would accommodate Afghanistan’s rich ethnic diversity and tradition of tribal authority, instead of recreating the centralized government authority of the 1964 Constitution.<sup>799</sup> Nevertheless, the Bonn Agreement installed Hamid Karzai as the interim administration head and reinstated the 1964 Constitution as interim basic law. Both Karzai and the U.S. preferred a centralized power and strong control.<sup>800</sup> The Bonn Agreement further aimed to provide a state-building roadmap and a political foundation of

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<sup>796</sup> Astri Suhrke, *Lessons from Bonn, Incremental peace in Afghanistan*, Accord Issue 27, at 22, available at [https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/6\\_Suhrke\\_Incremental-Peace-in-Afghanistan-21-25.pdf](https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/6_Suhrke_Incremental-Peace-in-Afghanistan-21-25.pdf).

<sup>797</sup> Michael Callen and Shahim Kabuli, *Three Sins: The Disconnect Between de jure Institutions and de facto Power in Afghanistan*, LSE Public Policy Review, 2(3), 2022, available at <https://doi.org/10.31389/lseppr.57>.

<sup>798</sup> See *id.*; see also Astri Suhrke, *Lessons from Bonn, Incremental peace in Afghanistan*, Accord Issue 27, at 23, available at [https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/6\\_Suhrke\\_Incremental-Peace-in-Afghanistan-21-25.pdf](https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/6_Suhrke_Incremental-Peace-in-Afghanistan-21-25.pdf).

<sup>799</sup> Jennifer Brick Murtazashvili, *The Collapse of Afghanistan*, *Journal of Democracy*, vol. 33, no. 1, Jan. 2022, pp. 40–54, available at <https://www.journalofdemocracy.org/articles/the-collapse-of-afghanistan/>.

<sup>800</sup> *Id.*

the Afghan republic, including setting up a constitution-making process under the Afghan Constitution Commission, setting up a centralized presidential system, and rebuilding the judiciary.

Similarly, the adoption of the 2004 Constitution of Afghanistan created a highly centralized structure of government with extensive powers to an elected president. This structure stood in stark contrast to the tribal authority and culture of Afghanistan.<sup>801</sup> Moreover, the constitution resurrected the old administrative regulations governing public finance, bureaucracy, police, and other top-down regulations that had been strongly influenced by the Soviet Union. This made it difficult for the state to later project its power outside of Kabul.<sup>802</sup>

The constitution and the electoral law that was adopted has also been highly criticized for a flawed electoral system design that led to weakened parliaments and weak political parties. This is thought to have gravely undermined the democratization process. In particular, under the single non-transferable vote (SNTV) system established within multi member provincial constituencies, Afghan voters would cast ballots for individual candidates rather than political parties, lists or blocks, and the candidates could not show party affiliation on the ballot. Each voter would cast one vote for one candidate, and if a province would have to elect five seats, the five candidates with the most votes would get those seats.<sup>803</sup> This system created a situation in which, for example, in 2010, 37% of votes were cast for winning candidates and the rest, 63% of the votes, were “wasted”, and only one in ten of the 2,600 candidates were formally linked to parties.<sup>804</sup> The system forced members from the same party or alliance to run against one another, and it made it virtually impossible for parties or other coalitions to form around a shared political agenda.<sup>805</sup> The system also created incentives for election fraud, which was particularly evident in the 2010 elections.<sup>806</sup>

Moreover, the constitution prohibited the formation of parties based on tribalism, language, religious sectarianism, and parochialism,<sup>807</sup> which limited the ability of ethnic groups to seek any redress for injustices or discrimination through the electoral process. This also

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<sup>801</sup> *Id.*; see also Michael Callen and Shahim Kabuli, *Three Sins: The Disconnect Between de jure Institutions and de facto Power in Afghanistan*. LSE Public Policy Review, 2(3), 2022, available at <https://doi.org/10.31389/lseppr.57>.

<sup>802</sup> Jennifer Brick Murtazashvili, *The Collapse of Afghanistan*. Journal of Democracy, vol. 33, no. 1, Jan. 2022, pp. 40–54, available at <https://www.journalofdemocracy.org/articles/the-collapse-of-afghanistan/>.

<sup>803</sup> Barnett R. Rubin, *Afghanistan: The wrong voting System*, New York Times, March 16, 2005, available at <https://www.nytimes.com/2005/03/16/opinion/afghanistan-the-wrong-voting-system.html>

<sup>804</sup> Andrew Reynolds and John Carey, *Fixing Afghanistan's Electoral System*, Afghanistan Research and Evaluation Unit, Briefing Paper Series, July 2012, available at <https://areu.org.af/publication/1211/>

<sup>805</sup> Michael Callen and Shahim Kabuli, *Three Sins: The Disconnect Between de jure Institutions and de facto Power in Afghanistan*. LSE Public Policy Review, 2(3), 2022, available at <https://doi.org/10.31389/lseppr.57>.

<sup>806</sup> Michael Callen and James D. Long, *Institutional Corruption and Election Fraud: Evidence from a Field Experiment in Afghanistan*, American Economic Review Vol. 105(1), Jan 2015, pp. 354-82, available at <https://www.aeaweb.org/articles?id=10.1257/aer.20120427>.

<sup>807</sup> The 2004 Constitution of the Islamic Republic of Afghanistan, Art 35.

aggravated the feeling that smaller ethnic groups were excluded from any significant participation.<sup>808</sup>

Notably, the electoral law reserved on average two seats per province, in total 68 seats, exclusively for women candidates. This system was regarded as a great success, as 68 women members in 2005 was the highest percentage in all of Asia, and it remained largely unchallenged by all sides. However, as noted above, the SNTV system created an environment where politics became personality-driven and any sort of collective positions on political issues were prevented, which meant that the women's presence in the parliament never actually translated into any mobilization around gender interests.<sup>809</sup>

The first presidential election in Afghanistan was held on October 9, 2004, and Karzai became the country's first democratically elected leader. His candidacy was initially supported by the U.S. The second presidential election in 2009, however, drew significant international attention and scrutiny. There were numerous allegations of fraud, voter intimidation, and manipulation of results in the election process, and the security situation further undermined voter turnout and the confidence in the process. Karzai was declared the winner, but his victory was surrounded by controversy, and calls for a runoff election emerged.<sup>810</sup> Eventually however, Abdullah Abdullah, Karzai's main rival, withdrew from the runoff, citing concerns about the electoral process, and as a result, Karzai remained in power for a second term.

In the 2014 elections, the main contenders were Ashraf Ghani and Abdullah Abdullah. While the results showed that Ghani led, Abdullah and his supporters alleged widespread fraud, which led to a political crisis and undermined the legitimacy and credibility of the electoral process. To address this crisis, a U.S.-brokered National Unity Government was established, providing for power-sharing between Ghani and Abdullah.

Yet, tension and power disputes continued in the following years despite the agreement. In a report by the International Crisis Group, it was noted that the tension largely stemmed from "widely divergent interpretations of the NUG agreement," as a "by-product of the vaguely worded agreement."<sup>811</sup> Abdullah believed that the agreement gave him an equal share in the

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<sup>808</sup> Meetra Qutb, *Sowing seeds of ethnic division? Afghanistan's constitution and electoral system*, May 14, 2020, LSE Blog, available at <https://blogs.lse.ac.uk/southasia/2020/05/14/long-read-sowing-seeds-of-ethnic-division-afghanistans-constitution-and-electoral-system/>

<sup>809</sup> *Id.* at 10-11.

<sup>810</sup> *Karzai Endorses Runoff in Disputed Afghan Presidential Election*, Radio Free Europe / Radio Liberty, October 20, 2009, available at [https://www.rferl.org/a/Karzai\\_Endorses\\_Runoff\\_In\\_Disputed\\_Afghan\\_Presidential\\_Election/1856442.html](https://www.rferl.org/a/Karzai_Endorses_Runoff_In_Disputed_Afghan_Presidential_Election/1856442.html)

<sup>811</sup> See *Afghanistan: The Future of the National Unity Government*, Asia Report No. 285, 10 April 2017, International Crisis Group, available at <https://www.crisisgroup.org/asia/south-asia/afghanistan/285-afghanistan-future-national-unity-government>

government, while Ghani insisted that the ultimate power resided in the presidency. Moreover, the two would “stack” the government and security agencies with their own allies, mainly on ethnic grounds, with Ghani favoring Pashtuns and Abdullah favoring Tajiks. This resulted in a perception of discrimination for excluded communities, particularly Hazaras and Uzbeks, which contributed to a growing ethnic and regional divide.<sup>812</sup>

### Provincial Reconstruction Teams

During the course of the U.S. occupation of Afghanistan, it operated, alongside a coalition of international partners, Provincial Reconstruction Teams (PRTs). PRTs were small teams of civilian and military personnel with the goal of promoting peace, governance, and reconstruction in the territories in which they operated. A total of 22 individual and distinct PRTs were operated in Afghanistan, 13 by the U.S. and 9 by the international coalition of International Security Assistance Force (ISAF).<sup>813</sup> While the PRTs were operated under U.S. and ISAF instructions, the individual character of each PRT was influenced by the region in which it operated. For example, ISAF PRTs operated primarily in the more stable regions in the north and west of Afghanistan while the U.S.-run PRTs operated in the more volatile southern and eastern regions of the country. The staffing of the U.S. PRTs included a military commander, a U.S. army civil affairs team, military police teams, and representatives from the U.S. Agency of International Development, State Department, and the U.S. Department of Agriculture, as well as a colonel from the Afghan National Police, who represented the Afghan central government and Interior Ministry.<sup>814</sup>

A primary critique of the PRTs is that there was not a cohesive strategy that oversaw the actions of each PRT. The first lack of cohesion was between the U.S. and ISAF PRTs. The second was the lack of cohesive strategy among U.S.-led PRTs. The mandate of the U.S.-led PRTs was to “win hearts and minds,” which was often done through quick reconstruction projects.<sup>815</sup> These projects were typically short-sighted and turned over when the tenure of the command of each PRT turned over, which were terms of one or two years. Furthermore, the civilians were volunteers not always properly trained in development tools and the U.S. government struggled to recruit sufficient volunteers.

The mix of civilian and military makeup of the U.S.-led PRTs meant that there were bifurcated goals. The military was not tasked with the security of the region but instead the base of the PRT and the civilians who worked there. The civilians relied on the military for security.

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<sup>812</sup> *Id.*

<sup>813</sup> *The U.S. Experience with Provincial Reconstruction Teams in Afghanistan*. United States Institute of Peace: Special Report. Special Report 152 October 2005.

<sup>814</sup> *Id.*

<sup>815</sup> *Id.*

The civilians were unable to leave the PRT without the military escort but the goals of the civilian and the military were not always aligned. Thus, the PRT ended up as a military, not a development organization.<sup>816</sup>

A key lesson of the PRT structure in Afghanistan is that for the program to have been more effective, it should have been led by the Afghan government to help develop a central coordinating mechanism and set guidelines for the PRT program. Those guidelines should have determined measures of effectiveness to evaluate the performance of the PRT. The PRTs would have benefited from centralization in this regard, which in turn could have provided replicable models to be modified based on the specific needs of the region. The security apparatus could have been coordinated between the Afghan and foreign military forces. Then, with stabilized models, the U.S. government and other international parties could have properly trained civilians to make adequate contributions based on the specific needs of the region.

### Transitions Without Justice

Afghanistan has had multiple phases of violent conflicts and foreign intervention in the last several decades. A violent communist revolution in 1978 was followed by rebellions and a long period of Soviet occupation and war that led to mass killings and forced displacement.<sup>817</sup> In the late 1980s, a civil war broke out between the highly fragmented rebellion groups known as mujahedeen, who had been armed by various countries and organizations in their fight against the Soviet, including the U.S., Pakistan, and Saudi Arabia. The Taliban emerged in 1994 as an Islamist movement of religious students from Pashtun, many of whom were former commanders in the war. By 1996 they had taken control over the country, and during their rule, violent conflicts continued and particularly women and minority groups were targeted and discriminated against.<sup>818</sup>

An estimated one million people were killed between 1979 and 2001, and around 241,000 people were killed between 2001 and 2021.<sup>819</sup> Many more were disabled and displaced due to the violence. However, there were never any real efforts to address the abuses of the past and establish any mechanisms for transitional justice in the country.

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<sup>816</sup> *Id.*

<sup>817</sup> Kaushik Roy, *The Soviet Invasion of Afghanistan: 1979–88*, War and Society in Afghanistan: From the Mughals to the Americans, 1500–2013.

<sup>818</sup> See e.g., *Afghanistan: Massacres of Hazaras in Afghanistan*, Vol. 13, No 1(C), February 2001, Human Rights Watch, available at <https://www.hrw.org/reports/2001/afghanistan/index.htm#TopOfPage> (Human Rights Watch report on two massacres committed by Taliban forces in 2000 and 2001 against primarily Hazaras).

<sup>819</sup> *Afghan War Has Claimed 241,000 Lives, Report Finds*, VOA News, April 16, 202, available at [https://www.voanews.com/a/south-central-asia\\_afghan-war-has-claimed-241000-lives-report-finds/6204666.html](https://www.voanews.com/a/south-central-asia_afghan-war-has-claimed-241000-lives-report-finds/6204666.html).

In 2005, the Afghanistan Independent Human Rights Commission (AIHRC), established by the Bonn Agreement, consulted with 6,000 Afghans and published a report titled “A Call For Justice.”<sup>820</sup> The report found that 69% of the respondents identified themselves or their immediate families as direct victims of a serious human rights violation, and almost 400 people responded that either they or an immediate family member had experienced torture or detention.<sup>821</sup> Moreover, 45% wanted immediate accountability in form of trials,<sup>822</sup> and 61% rejected the idea of offering amnesty in exchange for confessions.<sup>823</sup>

The AIHRC report included several recommendations for the government of Afghanistan to establish transitional justice mechanisms. The recommendations included vetting procedures for public office, reparations to victims, institutional reforms, and the establishment of a Special Prosecutor’s Office and specialized Chamber to try the cases of war crimes and crimes against humanity.<sup>824</sup>

Nevertheless, none of the AIHRC recommendations were implemented. Instead, contrary to the recommendations, the parliament passed a law in 2007 that provided a blanket amnesty for all perpetrators of human rights abuses of the past regimes.<sup>825</sup> The reason was mainly due to internal and external power dynamics. In particular, several members of the Afghan government and parliament were former mujahedeen and warlords that had allegedly committed serious crimes during the civil war. Moreover, the U.S.-led coalition often entered partnerships with armed factions that had committed atrocities in the past, in their war with al-Qaeda and the Taliban. It was therefore not in their interest to push for accountability at the time.<sup>826</sup>

### Current Status

Almost twenty years after the U.S. invasion in 2001, the U.S. signed an agreement with the Taliban to withdraw its forces from the country. The Taliban agreed to start intra-Afghan negotiations with the government and guaranteed that Afghanistan would not be used by any of

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<sup>820</sup> *A Call For Justice*, AIHRC, January 25, 2005, available at <https://www.refworld.org/reference/confdoc/aihrc/2005/en/58500>.

<sup>821</sup> *Id* at 8.

<sup>822</sup> *Id* at 20.

<sup>823</sup> *Id* at 21.

<sup>824</sup> *Id* at 45-52.

<sup>825</sup> *Amnesty Law Draws Criticism, Praise*, Radio Free Europe Radio Liberty, March 16, 2007, available at <https://www.rferl.org/a/1347518.html>.

<sup>826</sup> See e.g., Huma Saeed, *The Failure of Transitional Justice in Afghanistan: Impunity Turned Into Law*, September 15, 2021, Just Security, available at <https://www.justsecurity.org/78252/the-failure-of-transitional-justice-in-afghanistan-impunity-turned-into-law/>; see also Rama Mani, *Ending Impunity and Building Justice in Afghanistan*, Afghanistan Research and Evaluation Unit, December 200.

its members or other terrorist groups to threaten the security of the U.S. and its allies. Nevertheless, before any such intra-Afghan peace talks progressed, the U.S. decided to complete its withdrawal by September 2021. By August 2021, the Taliban had taken over the capital and the Afghan government collapsed.<sup>827</sup>

Between 2002 and 2021, the U.S. allocated almost \$90 billion in security sector assistance to the Afghan National Defense and Security Forces (ANDSF), aiming to develop an independent force. But the ANDSF remained reliant and dependent on the U.S. military, partly because the U.S. had designed the ANDSF as a “mirror image of U.S. forces,” requiring a high degree of professional military sophistication and leadership, unsuitable for the “realities of a poor country fighting a deeply entrenched insurgency.”<sup>828</sup> The U.S. troops were also far more effective on the battlefield, often leading missions at the expense of ANDSF gaining any experience in fighting. This meant that the ANDSF became “overly reliant on borrowed capabilities.”<sup>829</sup>

The ANDSF was also dependent on the U.S. contracted maintenance of vehicles and aircraft. After the U.S. decision to withdraw contract maintenance from Afghanistan in May 2021, which reduced the availability of operational aircraft and removed maintenance instruction at key regional airfields, the ANDSF therefore also lacked the logistical capability to move weapons and supplies quickly enough to meet operational demands.<sup>830</sup> These factors and many more, including the absence of a national security strategy implemented by the Afghan government post-U.S. withdrawal, as well as the effectiveness of the Taliban to exploit the ANDSF’s weaknesses, have been identified by the Special Inspector General for Afghanistan Reconstruction as the causes for the collapse of the ANDSF and the Afghan government.<sup>831</sup>

Since the takeover of the Taliban in 2021, the country is facing an ongoing humanitarian crisis and economic collapse, as well as further security threats from the Islamic State in Khorasan Province.<sup>832</sup> The human rights situation has also significantly worsened, particularly for women and minorities.<sup>833</sup>

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<sup>827</sup> *The U.S. War in Afghanistan*, Council on Foreign Relations, available at <https://www.cfr.org/timeline/us-war-afghanistan>.

<sup>828</sup> ‘*Why the Afghan Security Forces Collapsed*’, Special Inspector General for Afghanistan Reconstruction, February 2023, at 14 and 60, available at <https://www.sigar.mil/pdf/evaluations/SIGAR-23-16-IP.pdf>.

<sup>829</sup> *Id.*

<sup>830</sup> *Id.* at 15-16.

<sup>831</sup> *Id.* See also ‘*What We Need to Learn: Lessons from Twenty Years of Afghanistan Reconstruction*’, Special Inspector General for Afghanistan Reconstruction, August 2021, available at <https://www.sigar.mil/pdf/lessonslearned/SIGAR-21-46-LL.pdf>.

<sup>832</sup> *Afghanistan: An entire population pushed into poverty*, International Rescue Committee, updated on August 9, 2023, available at <https://www.rescue.org/article/afghanistan-entire-population-pushed-poverty>.

<sup>833</sup> *Afghanistan, Events of 2022*, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/afghanistan>.



## *Iraq Case Study*

### Saddam Hussein's Regime

In 1979, Saddam Hussein was formally sworn in as the president of Iraq, acting “swiftly and ruthlessly” to eliminate all the members of the Ba’ath Party whom he felt would not give him “unquestioning obedience.”<sup>834</sup>

By way of background, the Ba’ath movement was founded in the 1940s by two Syrian teachers that emphasized Arab unity, socialism, and modernization of the Arab World. The Iraqi Ba’ath Party emerged in 1951 with a promise to afford all parties extensive rights to elect officials and voice their opinions in party forums. Yet, after years of underground existence, the party became increasingly hierarchical and accustomed to violence as a political tool.<sup>835</sup> The Ba’ath Party became a useful tool for Saddam Hussein, serving as a means to wield control over the military and providing an ideological veneer. Sunnis were considered more likely to remain loyal as they were more hostile to Iran and feared a Shia government, which is why Sunnis were disproportionately represented in the Ba’ath senior ranks.<sup>836</sup>

During the second half of the 20th century, Iraq was involved in a variety of military actions, typically as the aggressor. The first Iraqi-Kurdish war erupted as a result of a failed attempt to negotiate Kurdish autonomy in northern Iraq and lasted until 1970, when the Ba’ath party offered the Kurds an autonomy agreement. The agreement was however never implemented, facing immediate difficulties to determine the border of the Kurdish region and the power-sharing arrangements, which led to the second Iraqi-Kurdish war erupting in 1974. The war resulted in the collapse of the Kurdish militias and the reconquest of north Iraq by Iraqi government troops.<sup>837</sup>

In 1980, Saddam ordered the invasion of Iran, which led to the Iran-Iraq war that lasted eight years.<sup>838</sup> In 1988, Saddam conducted a brutal military campaign, the Anfal campaign, against the Kurdish population in northern Iraq. The campaign was characterized by widespread atrocities, including mass killings and use of chemical weapons against the Kurdish village of

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<sup>834</sup> Tripp C. *The Ba’th and the rule of Saddam Husain 1968–2003*. In: *A History of Iraq*. Cambridge University Press; 2007:186-276.

<sup>835</sup> W. Andrew Terrill, *Lessons of the Iraqi De-Ba’athification Program for Iraq’s Future and the Arab Revolutions*. Strategic Studies Institute, US Army War College, 2012, at 9-10, available at <https://media.defense.gov/2023/May/04/2003215951/-1/-1/0/2179.PDF>.

<sup>836</sup> *Id.*

<sup>837</sup> Khoury, D. (2013). *Iraq’s Wars under the Ba’th*. In *Iraq in Wartime: Soldiering, Martyrdom, and Remembrance* (pp. 20-47). Cambridge: Cambridge University Press.

<sup>838</sup> *Id.*

Halabja. These actions were condemned by Human Rights Watch as acts of genocide<sup>839</sup> and deemed war crimes by a Dutch Court in 2007.<sup>840</sup> In 1990, Saddam invaded and annexed Kuwait, which led to Operation Desert Storm, launched by a U.S. led coalition, to liberate Kuwait and restore its sovereignty. Within a matter of weeks, Kuwait was liberated.

In 1991, in the aftermath of the Gulf War and the liberation of Kuwait, a series of popular revolts occurred in various parts of Iraq, including in the Kurdish-majority areas in northern Iraq, and the predominantly Shia areas of southern Iraq. Saddam responded with brutal repression and military crackdowns to quell the unrest. Estimates of the death toll vary, but thousands of people were killed or went missing during the uprisings and their aftermath, and many more Iraqis became internally displaced.

In March 2003, the U.S. invaded Iraq. The invasion was driven by a combination of factors, including concerns about Iraq's alleged possession of weapons of mass destruction, which was later found to be illusory, the perceived threat posed by Saddam's government, and the broader geopolitical dynamics following the September 11, 2001, terrorist attacks in the U.S.<sup>841</sup>

#### The Office for Reconstruction and Humanitarian Assistance

Around two months before the Iraq invasion, in January 2003, the U.S. government established the Office for Reconstruction and Humanitarian Assistance (ORHA) under the Department of Defense to plan for the postwar administration of Iraq. Retired Army Lieutenant General Jay Garner was tasked with setting up and staffing the office, which proved to involve many administrative hurdles. Among the issues were lack of sufficient office space for the staff, failures of the civilian and military agencies within the Department of Defense to identify and provide appropriate personnel in a timely manner, and an organizational scheme that would not properly unify military and civilian efforts for a post-conflict planning. These challenges, coupled with the very short timeframe, ultimately prevented ORHA from conducting proper strategic planning.<sup>842</sup>

Already in March 2003, ORHA staff members were deployed to Kuwait, where they struggled to find resources to, again, set up an office, as well as to obtain necessary assets for

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<sup>839</sup> *Genocide in Iraq - The Anfal Campaign Against the Kurds*. Human Rights Watch (1993), available at <https://www.hrw.org/reports/1993/iraqanfal/ANFALINT.htm>

<sup>840</sup> *Public Prosecutor v. Frans Cornelis Adrianus van Anraat*, District Court of The Hague, The Netherlands, Case No. 09/751003-04, 23 December 2005.

<sup>841</sup> *Timeline: The Iraq War*, Council on Foreign Relations, available at <https://www.cfr.org/timeline/iraq-war>

<sup>842</sup> Nora Bensahel, et al. *"The Office of Reconstruction and Humanitarian Assistance."* After Saddam: Prewar Planning and the Occupation of Iraq, 1st ed., RAND Corporation, 2008, pp. 53–72, at 53-57. *JSTOR*, <http://www.jstor.org/stable/10.7249/mg642a.13>.

security, communications, and transportations, due to the simultaneous and higher priority needs of the combat operations. Their planning efforts were further limited by their lack of knowledge of the war plans, and they were directed to stay behind in Kuwait during the combat operations given the unstable security situation. The ORHA initially anticipated their mission to be limited and not last more than 90 days.<sup>843</sup>

In April 2003, the majority of the ORHA staff together with Garner arrived in Baghdad and discovered that the conditions were very different from what they had planned for. ORHA had anticipated that the war would lead to a major refugee crisis and extensive damages to critical infrastructure that would cause a massive humanitarian disaster, and therefore planned accordingly. Instead, ORHA was confronted with extensive looting and sabotage in the direct aftermath of the fall of Baghdad, which destroyed a lot of infrastructure. Furthermore, many ministry buildings and other structures and facilities were completely destroyed, which made it difficult for ORHA to identify ministry personnel. Without proper contacts with ministry personnel, the ORHA ministerial advisory teams could not take over the functioning ministries as planned, but instead had to rebuild ministers from scratch.<sup>844</sup>

Another main challenge was the continued combat operations. After the fall of the Saddam regime, the regime loyalists, insurgents, and foreign fighters continued to fight and compete for the power vacuum that had emerged. The security situation made ORHA very exposed and dependent on U.S. military forces, which in turn made it difficult for ORHA to move around Baghdad. This limited the possibilities of ORHA to establish the necessary relationships with the Iraqis, who had grown increasingly fearful.<sup>845</sup>

#### The Coalition Provisional Authority and the Development Fund for Iraq

Following the occupation of Baghdad there was a shift in U.S. policy. ORHA started to plan for the transition to a permanent presidential envoy to Iraq and to replace Garner with L. Paul Bremer as the executive head of the Coalition Provisional Authority (CPA). While ORHA had been tasked to assist a new Iraqi government for a short transitional period, CPA would have “all the powers of an occupation authority” with expectations of a much longer and involved

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<sup>843</sup> *Id.* at 67-68.

<sup>844</sup> *Id.* at 68-69.

<sup>845</sup> *Id.* at 69-70.

engagement.<sup>846</sup> Bremer built CPA largely from scratch because ORHA's expertise and work was deemed as not relevant to the new organization.<sup>847</sup>

The CPA, with chief executive Bremer, reported directly to the U.S. Secretary of Defense. While the U.N. Security Council did not endorse the U.S. led invasion of Iraq, it did endorse the CPA process to return control to the Iraqi people, and it recognized the legitimacy of the CPA as a transition authority in Iraq in U.N.S.C Resolution 1483.<sup>848</sup>

Some commentators have however suggested that the Security Council appears to have derogated from the law of occupation in the U.N.S.C Resolution 1483, giving the CPA powers that went beyond the bounds of the law of occupation.<sup>849</sup> Critique has, for example, been directed against the enactment of CPA Order No. 39 as inconsistent with the very nature of the law of occupation.<sup>850</sup> Order No. 39, among other things, essentially replaced all previous Iraqi foreign investment law that restricted foreigners' ability to own property and invest in Iraqi business, and "opened up the Iraqi economy to foreign investment to an unprecedented degree."<sup>851</sup>

Similarly, commentators have criticized the CPA's revision of the tax system of Iraq and changes to Iraqi company law by CPA Orders 37 and 64, respectively, to rather have seemed to "reflect the preferences of the [U.S.] for a liberal economy rather than an absolute necessity for the security of the occupying powers or for the welfare of the Iraqi population."<sup>852</sup>

Under the authority of the U.N.S.C Resolution 1483, billions of dollars from the UN Oil for Food Program and proceeds from Iraqi oil exports were transferred into a new account held at the Federal Reserve Bank in New York, called the Development Fund for Iraq (DFI). This was intended to be spent by the CPA for the benefit of the Iraqi people in a transparent manner, and an independent oversight body, the International Advisory and Monitoring Board for Iraq

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<sup>846</sup> *Id.* at 71; see also Marten Zwanenburg, *Existentialism in Iraq: Security Council Resolution 1483 and the Law of Occupation*, *Revue Internationale De La Croix-Rouge/International Review of the Red Cross* 86, no. 856 (2004): 745-69.

<sup>847</sup> Nora Bensahel, et al. "The Office of Reconstruction and Humanitarian Assistance." *After Saddam: Prewar Planning and the Occupation of Iraq*, 1st ed., RAND Corporation, 2008, pp. 53-72, at 72. *JSTOR*, <http://www.jstor.org/stable/10.7249/mg642a.13>.

<sup>848</sup> UNSC Res. 1483.

<sup>849</sup> See e.g., Marten Zwanenburg *Existentialism in Iraq: Security Council Resolution 1483 and the Law of Occupation*, *Revue Internationale De La Croix-Rouge/International Review of the Red Cross* 86, no. 856 (2004): 745-69.

<sup>850</sup> See e.g., Daphne Eviatar, *Free-market Iraq? Not so fast*, 10 January 2004, *New York Times*.

<sup>851</sup> Marten Zwanenburg *Existentialism in Iraq: Security Council Resolution 1483 and the Law of Occupation*, *Revue Internationale De La Croix-Rouge/International Review of the Red Cross* 86, no. 856 (2004): 745-69, at 757; See also Eviatar, Daphne "Free-market Iraq? Not so fast", 10 January 2004, *New York Times*.

<sup>852</sup> Marten Zwanenburg *Existentialism in Iraq: Security Council Resolution 1483 and the Law of Occupation*, *Revue Internationale De La Croix-Rouge/International Review of the Red Cross* 86, no. 856 (2004): 745-69, at 758-759.

(IAMB), was set up to ensure financial accountability and transparency.<sup>853</sup> The Congress of the United States also voted to spend around \$18 billion of U.S. taxpayers' money on the redevelopment of Iraq.<sup>854</sup>

In June 2004, by the time that Bremer left Baghdad and transferred sovereignty to the Iraqi Interim Government, the CPA had spent around \$20 billion of Iraqi money, and approximately \$300 million of US funds. In July and October 2004, audit reports revealed that around \$8 billion of Iraqi money had been unaccounted for.<sup>855</sup> The auditors also expressed concern about the use of non-competitive bidding procedures for some contracts funded from the DFI.<sup>856</sup>

While disbursing funds outside of the U.S. government contracting channels certainly allowed for a quicker response to urgent needs, this also enabled corruption.<sup>857</sup> According to one commentator, the CPA tendered a very high proportion of bids non-competitively, which allowed them to handpick Western, mainly U.S., contractors, without any formal bidding process, and where bids were competitively tendered, they incorporated very short periods of notice, which generally created competitive advantages for contractors that were given advance warning of the contract window.<sup>858</sup> Moreover, over-charging or additional payments through “cost-plus” contracts was found to be common in the reconstruction contracts, as well as inflated payrolls and ghost employees. There were also several instances of bribery and fraud reported.<sup>859</sup> As a commentator put it, it was “difficult to reconcile the strategy of the occupiers with the authority vested in the CPA by the UN Security Council.”<sup>860</sup>

### Economic Reconstruction Efforts by the CPA

The United States Institute of Peace (USIP) created a report in 2005, identifying several important lessons learned from the CPA's economic reconstruction in Iraq. One of the main findings was how the combination of large public procurement projects, inadequate regulatory

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<sup>853</sup> UNSC Res. 1483.

<sup>854</sup> *Rebuilding Iraq: U.S. Achievements Through the Iraq Relief and Reconstruction Fund*, Feb 2009, United States Department of State available at <https://2001-2009.state.gov/p/nea/rls/rpt/60857.htm>

<sup>855</sup> *So, Mr Bremer, where did all the money go?* The Guardian, July 7, 2005, available at <https://www.theguardian.com/world/2005/jul/07/iraq.features11>

<sup>856</sup> Statement by the International Advisory and Monitoring Board on Iraq—Release of the KPMG Audit Reports on the Development Fund for Iraq July 15, 2004, available at <http://www.iamb.info/dfiaudit.htm>

<sup>857</sup> Anne Ellen Henderson, *The Coalition Provisional Authority's Experience with Economic Reconstruction in Iraq*, United States Institute of Peace, at 5, available at <https://www.usip.org/sites/default/files/resources/sr138.pdf>

<sup>858</sup> Dave Whyte, *The Crimes of Neo-Liberal Rule in Occupied Iraq*, *The British Journal of Criminology*, Volume 47, Issue 2, March 2007, Pages 177–195, at 187; *So, Mr Bremer, where did all the money go?* The Guardian, July 7, 2005, available at <https://www.theguardian.com/world/2005/jul/07/iraq.features11>

<sup>859</sup> Dave Whyte, *The Crimes of Neo-Liberal Rule in Occupied Iraq*, *The British Journal of Criminology*, Volume 47, Issue 2, March 2007, Pages 177–195, at 188-189.

<sup>860</sup> *Id.* at 189.

mechanisms, and major funding infusions, on top of a legacy of entrenched corruption in Iraq, created a “fertile ground for corrupt practices.”<sup>861</sup>

The USIP report notes that CPA was looking for quick fixes, but international experience shows that there are no quick fixes for corruption. Merely creating an inspection body to promote transparency does not automatically provide transparency in an environment where that has never existed. CPA never provided the new anticorruption agencies with the adequate training, policy tools, or political authority needed, and anti-corruption was never “mainstreamed” into all functions of government, as this would have required confrontation with officials in the Iraqi government. Adding to the difficulties to combat corruption was language barriers, unfamiliarity with Iraqi culture, and limited access to ministers, project sites, enterprises, and other places where corruption was taking place. This was all on top of the allegations and investigations mentioned above into CPA’s own misuse of funds.<sup>862</sup>

According to the USIP, the economic reconstruction efforts of the CPA were “notable for both impressive accomplishments and serious shortcomings,”<sup>863</sup> as they were aiming to transform Iraq’s state-controlled economic system to a market economy in a matter of months, with the support of officials that had no experience in post-conflict reconstruction or the Middle East.<sup>864</sup> Among the biggest challenges that the CPA faced were rebuilding and restoring government economic functions after state collapse and looting, dismantling corrupt state economic controls, stimulating the growth of private sector, rebuilding infrastructure destroyed by the war, looting, sanctions etc., and preventing currency collapse, hyperinflation and economic chaos.<sup>865</sup>

The main challenge however, was “not how to provide what Iraq lacked, but how to manage what it possessed,”<sup>866</sup> namely oil supply and wealth. While oil wealth can provide the resources necessary for a country to rebuild itself, many oil and mineral rich countries, like Iraq or Iran, are instead stuck in a “resource trap,” or sometimes referred to as a “resource curse.” The resource trap is when a country’s rich natural resources and wealth has not been spent to generate any sustainable growth and welfare for its population, but instead created a “trap” of mismanagement, corrupt bureaucracies, fragile institutions, stagnation, and a power system that relies on distribution of patronage and side-payments to maintain its authority.<sup>867</sup>

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<sup>861</sup> Anne Ellen Henderson, *The Coalition Provisional Authority’s Experience with Economic Reconstruction in Iraq*, United States Institute of Peace, at 16, available at <https://www.usip.org/sites/default/files/resources/sr138.pdf>

<sup>862</sup> *Id.* at 16-17.

<sup>863</sup> *Id.* at 1.

<sup>864</sup> *Id.* at 3.

<sup>865</sup> *Id.* at 3.

<sup>866</sup> *Id.* at 3.

<sup>867</sup> *Id.* at 3; see also Nancy Birdsall and Arvind Subramanian. “Saving Iraq from Its Oil.” *Foreign Affairs* 83, no. 4 (2004): 77-89.

Among some of the CPA's more successful economic reconstruction projects was unifying the currency, stabilizing the exchange rate, liberalizing prices without igniting inflation, meeting immediate needs (such as food ration distributions and civil servant salary payments), launching small-scale reconstruction projects such as repairs to the sewage system, and garbage collection.<sup>868</sup> Much of this success was credited to the speedy access to funds granted via the DFI. Moreover, projects that built on existing capacity were also more likely to succeed. The USIP also concludes that these initiatives imposed no larger costs or sacrifices on the population and were not constrained by the security situation.<sup>869</sup>

In contrast, the CPA's failures often coincided with high social costs, such as the fear of civil unrest in the event of fuel price subsidies were terminated, and security disruptions that prevented progress, including looting and sabotage. Lack of existing Iraqi capacity to build upon, such as the lack of a functioning tax collection system, also contributed to policy failures. Additionally, unsuccessful policies often involved significant structural changes, and the CPA's inability to address endemic corruption underscored the challenges in achieving such changes.<sup>870</sup>

As mentioned above, the ORHA had only focused its economic planning for a humanitarian disaster. When the disaster never materialized, they were left without any economic plan. Officials have cited the lack of reliable data and the complexity of managing Iraq's economic reconstruction as reasons for their lack of planning. However, USIP recommends that the best response is still to plan to address a range of eventualities. One example identified in the report was that they should have been able to plan for the fact that Iraq's infrastructure would require emergency repairs, due to years of degradation from war, sanctions, and neglect. The CPA's efforts were not focused on repairing existing facilities, but instead to build new infrastructures from the ground up, without any planning and contracting for major projects in advance, leading to disastrous delays. They also failed to anticipate the chaos that followed with state collapse, as well as the rise in insurgency and resistance.<sup>871</sup>

Other insightful learnings from the report were that effective reforms require empowered owners with leadership experience,<sup>872</sup> short-term initiatives need to be supported by long-term development programs,<sup>873</sup> and that promoting private sector growth requires more than merely removing barriers and focusing on regulatory reform. It requires active assistance, such as training, capacity-building, investments, small business loans etc.<sup>874</sup> The report also notes that

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<sup>868</sup> Anne Ellen Henderson, *The Coalition Provisional Authority's Experience with Economic Reconstruction in Iraq*, United States Institute of Peace, at 4, available at <https://www.usip.org/sites/default/files/resources/sr138.pdf>

<sup>869</sup> *Id.* at 4-5.

<sup>870</sup> *Id.* at 5.

<sup>871</sup> *Id.* at 6.

<sup>872</sup> *Id.* at 15-16.

<sup>873</sup> *Id.* at 9-10.

<sup>874</sup> *Id.* at 14-15.

“there is no blueprint for economic transition.”<sup>875</sup> The CPA relied heavily on experiences from Eastern Europe and a strong belief in rapid privatization and foreign investments, and they therefore saw no need to consult with locals before implementing their reform efforts, which not only largely failed, but also led to controversy and negative Iraqi perception.<sup>876</sup>

### Disbanding the Iraqi Army and de-Ba’athification

Two other key initiatives undertaken by the CPA were the de-Baathification program and the replacement of the Iraqi army. These policies created an unemployment situation for hundreds of thousands of people, many of them trained in the military, which is believed by many to have fueled the insurgency that came.<sup>877</sup>

In the immediate aftermath of Saddam’s removal, in order to keep the economy from collapsing, ORHA had been willing to allow former administrators and professionals such as doctors and professors to keep their jobs if they were not implicated in any crimes and willing to renounce their affiliations with the Ba’ath Party. On May 16, 2003, however, CPA, under the leadership of Bremer and the directive of the Undersecretary of Defense for Policy, issued an order to de-Baathify Iraq.<sup>878</sup> A second order came shortly thereafter which disbanded Iraq’s military and intelligence forces.

The de-Ba’athification order disestablished the Ba’ath Party, removed members of the four highest ranks from government positions, and banned them from future employment in the public sector. The order also required interviews to be conducted with anyone holding positions in the top three management layers in government institutions to determine their level of involvement in the party and criminal activities, and to bar any that were determined senior members from public employment. Lastly, the order created a rewards program that paid individuals that helped provide information to capture senior party members.<sup>879</sup>

For many, there was no clear justification of the de-Baathification order. Joining the party in Saddam’s Iraq was considered a rational decision for anyone who wanted to live above the poverty line. The best jobs were to be found in the government and state-controlled enterprises, particularly due to a lack of private sector with a variety of good jobs. Moreover,

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<sup>875</sup> *Id.* at 10.

<sup>876</sup> *Id.* at 10-12.

<sup>877</sup> James P. Pfiffner, *US Blunders in Iraq: De-Baathification and Disbanding the Army, Intelligence and National Security*, Vol. 25, No. 1, 76-86, February 2010, available at <https://pfiffner.gmu.edu/files/pdfs/Articles/CPA%20Orders,%20Iraq%20PDF.pdf>.

<sup>878</sup> W. Andrew Terrill, *Lessons of the Iraqi De-Ba’athification Program for Iraq’s Future and the Arab Revolutions*. Strategic Studies Institute, US Army War College, 2012, at 13-14, available at <https://media.defense.gov/2023/May/04/2003215951/-1/-1/0/2179.PDF>.

<sup>879</sup> *Id.* at 14.



Saddam rewarded Baathists in government positions more than non-Baathists. For example, a non-Ba'athist primary school teachers would be paid the equivalent of U.S. \$4 per month, while a Ba'athist in the same position would be paid around \$200 per month.<sup>880</sup>

In 2023, Bremer wrote an op-ed, reflecting upon the decisions taken by the CPA in 2003.<sup>881</sup> Bremer rejected the claim that the de-Baathification was the reason for the collapse of the Iraqi government. He claimed that the CPA's de-Baathification decree was narrowly drawn, as it applied to only the top one percent of the party members (about a tenth of one percent of the population) for government positions, and many exceptions were authorized for Baathist to remain in government positions.

However, narrowly drawn the order, the implementation was broad. It is estimated that up to 50,000 people or more were affected by the de-Baathification order.<sup>882</sup> The order ended up punishing people not because of individual misconducts, abuse of power, or other crimes, but for merely being part of Iraq's managerial class. Commentators note that that there were alternative choices available to address the issues, including for example, placing Ba'athists on trial and punish only those found guilty of crimes, including human rights violations, corruption, and incompetence, or the establishment of a truth and reconciliation commission similar to the South African transitional justice process. The order could have also been more narrowly drawn, to only apply to the top two levels of the leadership.<sup>883</sup> Critics believe that a more targeted approach to de-Ba'athification through individualized interviews rather than wholesale removal of affiliates would have made the process more successful in that fewer Iraqis would be alienated from the new government in the process.

The de-Ba'athification process impacted the educational system, utilities, food distribution, and the oil industry. For example, tens of thousands of teachers had been dismissed from their jobs, even if they were low-ranking members of the party who had been forced to join as a condition of their employment. This created dysfunctional schools and universities, which harmed teachers, students, and families.<sup>884</sup> According to one commentator, the order was taken as "at least a partial green light for some Iraqis to exact revenge on former Ba'athists."<sup>885</sup> At the same time, there were several assassination campaigns by Shias against former Ba'athists, likely in coordination with Iranian intelligence units.<sup>886</sup> This was in turn viewed by many Sunnis as an

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<sup>880</sup> *Id.* at 20-21.

<sup>881</sup> Paul Bremer, *What went right in Iraq*, 16 Mar 2023, The Interpreter, available at <https://www.lowyinstitute.org/the-interpreter/what-went-right-iraq>.

<sup>882</sup> W. Andrew Terrill, *Lessons of the Iraqi De-Ba'athification Program for Iraq's Future and the Arab Revolutions*, Strategic Studies Institute, US Army War College, 2012, at 20-21, available at <https://media.defense.gov/2023/May/04/2003215951/-1/-1/0/2179.PDF>.

<sup>883</sup> *Id.*

<sup>884</sup> *Id.* at 24-25.

<sup>885</sup> *Id.* at 29

<sup>886</sup> *Id.*

effort to establish a new political system where Shias were dominating Sunnis.<sup>887</sup> The Iraqi government made several attempts to relax the de-Ba'athification process through various policies later adopted, by for example, removing hiring restrictions on those who had not committed any crimes.<sup>888</sup>

In the same op-ed, Bremer also defended the decision to disband the Iraqi army because of the perceived need to build a new army from scratch to remove the stain of the army's decades of oppression under Saddam. In April 2003, when it became clear that Iraq was losing the war, draftees had deserted their posts, leaving "no army to 'disband.'"<sup>889</sup> Officers and volunteers from the previous army were still allowed to apply to join the new army. When the CPA left in June 2004, around 60 percent of the new army's officers were from the old army.<sup>890</sup>

The decision to dissolve the Iraqi Army was perhaps met with even more controversy. The rationale was not clear, even for anti-Saddam Iraqi exiles, and particularly given that the de-Ba'athification process that only the senior Ba'athist officers could have been retired and the low-ranking Ba'athists or non-Ba'athists could have been offered the option to remain in the military. The same military could have been restructured by, for example, removing political functionaries and special security forces that were put in place to ensure loyalty to Saddam. The same military under new leadership could have then provided security for the new government.<sup>891</sup>

Moreover, no efforts were made to recall the former soldiers who might have been interested to serve their country. One former CPA senior administrator, Larry Diamond, noted that there were many warning signs that the former Iraqi officers would create problems if they were not given other options than leaving a military career without anything.<sup>892</sup> Many Ba'athists joined resistance organizations or turned to violent Islamist groups to fight the U.S. and the Iraqi government.

The U.S. was left with many enemies to deal with, but nevertheless initially decided to recreate an Iraqi army with a small force of around 40,000 troops equipped with light arms. One explanation is that they feared a militarized state that would pose a threat to neighboring countries and a new government. The CPA orders also dissolved Iraqi intelligence organizations, making it difficult to maintain intelligence duties focused on anti-Iranian counterintelligence. This issue was recognized as particularly difficult, given that many of the former intelligence

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<sup>887</sup> *Id.* at 30.

<sup>888</sup> *Id.* at 33-34.

<sup>889</sup> Paul Bremer, *What went right in Iraq*, 16 Mar 2023, The Interpreter, available at <https://www.lowyinstitute.org/the-interpreter/what-went-right-iraq>.

<sup>890</sup> *Id.*

<sup>891</sup> *Id.* at 36-39.

<sup>892</sup> *Id.* at 39-40.

personnel had been involved in potential war crimes in human rights violations. One commentator notes that the example of the CIA's use of former Nazi general Reinhard Gehlen against the Soviet Union after the war, might have served as a "starting point for consideration of how this could be done."<sup>893</sup>

Thinking about parallels and differences between Iraq and the Arab Spring revolutionary nations, one commentator noted that the lessons of the de-Ba'athification may have most relevance in Syria and Libya, where both have a long history of intense repression and no tradition of democracy, similar to Iraq, and where Syria also includes many different sectarian groups, much like Iraq. The commentator particularly highlighted that the Iraq example indicates the important role of fair judicial institutions, rather than political commissions, to ensure that justice is dispensed on an individual basis and not expanded into collective punishment. Moreover, in the context of Syria, the commentator noted that any program similar to the de-Ba'athification process would be particularly brutal, given the long list of crimes that the regime has committed against its people, and that given the prospect of all Syrian Alawites to be viewed as regime supports, a de-Ba'athification process in Syria would likely take on a sectarian character similar to that in Iraq.<sup>894</sup>

Thinking about parallels and differences between the de-Ba'athification process and the de-Nazification process, there are several important design and implementation differences worth mentioning, in addition to the different economic and geopolitical contexts. For example, the de-Nazification documents are said to have included a sophisticated understanding for the cultural nuances and political landscape of Germany, which was completely missing in the Iraq case. The de-Nazification was a bottom-up initiative, engaging anti-Nazi people in villages to inform who the Nazis had been at village level, whereas the Iraqi process was the opposite, a top down approach, without any information about the Baathists identity and even why there were Baathists. Moreover, in Germany, both the Nuremberg trials and the de-Nazification program worked holistically as one transitional justice process, without impeding each other's functions, but the opposite was true in Iraq. Judges and staff at the Iraqi High Tribunal that were deemed as having "Ba'athist backgrounds," despite no or very low-level role in the party, were threatened to be purged and many were even replaced due to the de-Ba'athification process, which naturally impacted the transitional justice work of the Iraqi High Tribunal.<sup>895</sup>

It is, however, worth noting that while some might claim that the de-Nazification process achieved its goal of discrediting Nazism and dismantling Nazi organizations, others argue that

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<sup>893</sup> *Id.* at 40-42

<sup>894</sup> *Id.* at 62, 71-83.

<sup>895</sup> Aysegul Keskin Zeren, *From De-Nazification of Germany to De-Baathification of Iraq*, *Political Science Quarterly*, 132(2), 2017, 259-290.

even that process had a reversal effect, creating increased sympathy for Nazis following 1951 and strengthening Nazis in the postwar years.<sup>896</sup>

### Special Tribunal for Crimes Against Humanity

Another important decree created by the CPA and Iraq's Governing Council in 2003, was the Special Tribunal for Crimes Against Humanity, which organized the trial of Saddam Hussein and other members of his party. Early on, Human Rights Watch noted that the Iraqi judiciary, which had been weakened and compromised by decades of Ba'ath party rule, lacked the capacity, experience, and independence to provide fair trials. Human Rights Watch therefore stated that international jurists would need to play a prominent role in these courts to ensure effectiveness and impartiality. They recommended the creation of an international tribunal or an international-national tribunal for Iraq, including international colleagues to assist the Iraqi judiciary. They also recommended the creation of an international or Iraqi-international commission of experts to assist with gathering and preserving evidence and recommendations for the court proceedings.<sup>897</sup>

None of these recommendations materialized, and while Saddam was found guilty of crimes against humanity and executed in 2006, many members of the Ba'ath party were ultimately not held accountable for their actions. This led some Iraqis to take matters into own hands and assassinate middle-ranking Ba'athists.<sup>898</sup>

A survey conducted by the International Center for Transitional Justice in 2003, suggested that there was a strong sentiment in the Iraqi society that the leadership of the Saddam regime should face trial for their crimes and that these trials should take place in Iraq under Iraqi control. Most people rejected the idea of trials dominated by the international community or held in a foreign state but did not reject the expertise or assistance from abroad to ensure fairness, integrity, and transparency. There was also overwhelming support for the death penalty, according to the survey results.<sup>899</sup>

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<sup>896</sup> *Id.*

<sup>897</sup> *Iraq: Justice Needs International Role*, Human Rights Watch, July 14, 2003, available at <https://www.hrw.org/news/2003/07/14/iraq-justice-needs-international-role>

<sup>898</sup> Al-Marashi, I. and Keskin, A. 'Reconciliation Dilemmas in Post-Ba'athist Iraq: Truth Commissions, Media and Ethno-sectarian Conflicts', *Mediterranean Politics*, 13(2), 2008, pp. 243–259.

<sup>899</sup> International Center for Transitional Justice, *Iraqi Voices: Attitudes Towards Transitional Justice and Social Reconstruction*, May 2004, available at <https://www.ictj.org/sites/default/files/ICTJ-Iraq-Voices-Reconstruction-2004-English.pdf>

## Sectarian Violence and Consociational Arrangements

Transitional justice efforts in Iraq have been aimed to address sectarian divisions by incorporating consociational provisions into the Iraqi Constitution and the governing bodies, to ensure representation from Kurds, Sunnis, and Shias. For example, the Iraqi Governing Council, a body that assisted the CPA in the transition, consisted of 25 Iraqi leaders from diverse ethnic groups. Moreover, the electoral law that was later adopted included a proportional representation system that ensured that different ethnic groups would have representatives in the Iraqi Parliament. Some highly contentious issues remained unsolved, however, including the disagreement on the control and distribution of natural resource revenues located in the Kurdish regions.<sup>900</sup>

In 2014, ISIS took control of large parts of Iraqi territory. Regional forces, including thousands of Iranian troops, joined the Iraqi army, local tribes, and the Kurdish Peshmerga in operations to retake territory, and in 2017, with the help of an escalation of U.S. presence, the Iraqi government was finally able to declare victory over ISIS. Since 2021, clashes and tensions have continued between Iran-aligned groups or Turkey and Kurdish organizations in Iraq. Additionally, Iran-backed militia groups have targeted U.S. troops in Iraq, Syria, and Jordan, in opposition to Israel's campaign in Gaza. The Biden administration responded by a series of retaliatory strikes on targets throughout Iraq and Syria, which according to the Iraqi government killed sixteen people, including civilians.<sup>901</sup>

### *Syria Case Study*

#### The Assad Regime

The Assad family came to power in the late 1960s and finally in 1971 when Hafez al-Assad declared himself president following decades of destabilizing coups and political unrest. The Assad family was supported by three primary factions: Alawites (ethnoreligious group primarily in the Levant, which has early roots in Shi'ism), the Arab Socialist Ba'ath party, of which the Assads are members, and the armed forces.<sup>902</sup> Hafez al-Assad was himself a commander of the air force and a minister of defense before becoming president. Hafez al-Assad's Ba'athist regime integrated the Syrian armed forces and the secret police into the party apparatus.

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<sup>900</sup> E.W. Johnson, Darin, "Chapter 23: Iraq: seeking stability after Saddam". In *Research Handbook on Post-Conflict State Building*, Cheltenham, UK: Edward Elgar Publishing, 2020.

<sup>901</sup> *Instability in Iraq*, Feb 14, 2024, Council on Foreign Relations, *available at* <https://www.cfr.org/global-conflict-tracker/conflict/political-instability-iraq>

<sup>902</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

When Bashar al-Assad came to power following his father's death in 2000, some heralded him as a reformer and promised to make democratic changes; however, Bashar al-Assad's inner circle remained closely held and operated similarly to his father's. In the immediate aftermath of Bashar al-Assad's ascension as the president of Syria, he directed his government to suppress democratic protests and discussion, which may have threatened his dynastic rule. While Assad broke up privatized state monopolies, instead of democratizing, he gave the benefits to the well-connected and loyal members of the Assad family support system. A corollary to these benefits is that those who were not loyal to the Assad family were exiled from the country, including Assad family members. This was a perpetuation of the kleptocracy and domination that existed under the older Assad's rule as well.<sup>903</sup>

### Arab Spring and Subsequent Civil War

The Arab Spring began in December 2010 in Tunisia with protests against the corruption in the Tunisian government, which precipitated further protests and uprisings throughout the region. These protests prompted the removal of authoritarian rulers in Tunisia, Egypt, and Yemen.<sup>904</sup> Peaceful protests and demonstrations<sup>905</sup> broke out in Syria as well, inspired by the other regional events.

Large-scale protests and pro-democracy rallies began in spring and summer of 2011, which were violently suppressed by Assad forces, resulting in death and imprisonment.<sup>906</sup> The fighting continued for years and by 2013 had become a full proxy war with Hezbollah and Iran arming Assad's forces, while Saudi Arabia, Turkey, and Qatar funded and armed the rebel militias.<sup>907</sup> International involvement increased following accusations of the use of chemical weapons in 2013, which prompted an agreement between Russia, Syria, and the United States to place Syria's chemical weapons under international control. Since the beginning of the protests,

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<sup>903</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

<sup>904</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

<sup>905</sup> "We've Never Seen Such Horror" Crimes against Humanity by Syrian Security Forces. (June 1, 2011) *available at* <https://www.hrw.org/report/2011/06/01/weve-never-seen-such-horror/crimes-against-humanity-syrian-security-force>

<sup>906</sup> Taub, Ben. The Assad Files. The New Yorker (April 18, 2016) *available at* <https://www.newyorker.com/magazine/2016/04/18/bashar-al-assads-war-crimes-exposed>

<sup>907</sup> Bashar Al-Assad, Britannica, *available at* <https://www.britannica.com/biography/Bashar-al-Assad/Unrest-and-civil-war> (accessed January 18, 2024).

there have been hundreds of thousands of deaths and nearly half of Syria's pre-war population has been displaced.<sup>908</sup>

International diplomatic efforts have been made in attempts to mediate the conflict and facilitate a political transition. Certain challenges to the UN efforts come from members of the UN Security Council who have veto powers, which have been used to prevent meaningful international efforts.<sup>909</sup> The Geneva Communique was a multilateral document that called for a transitional governing body in 2012 but was always preconditioned on removal of Assad from power.<sup>910</sup> Assad did not participate in such efforts and retained the support of Iran and Russia.

### Current Status

Fighting largely subsided in 2023 with Assad once again consolidating power but the north continuing to be occupied by rebel forces and their international supporters.<sup>911</sup> It has been estimated that over three hundred thousand civilians have died in the conflict since 2011, including nearly thirty thousand children.<sup>912</sup>

Assad has regained control of approximately 70% of Syrian territory and has worked toward normalized diplomatic relationships with certain countries in the region. Syria, which was suspended from the Arab League for the state's actions at the outbreak of the civil war, has been reinstated.<sup>913</sup> The normalization of diplomatic relations with Syria<sup>914</sup> has reverberated around the globe and is justified by the United Nations as a shift in approach from sanctions and isolation, which has not worked over the last dozen years, to engagement.<sup>915</sup> The reinstatement to the Arab League was not a consensus, but rather a vote of a majority of the states in attendance at a May 2023 meeting. Certain leaders continue to oppose Syria's reinstatement, including Qatar, which is aligned with the United States and other western allies in supporting and arming the Assad opposition forces.

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<sup>908</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

<sup>909</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

<sup>910</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

<sup>911</sup> Laub, Zachary. Syria's Civil War: The Descent into Horror. Council on Foreign Relations (February 14, 2023) *available at* <https://www.cfr.org/article/syrias-civil-war>

<sup>912</sup> *Why has the Syrian war lasted 12 years?*, BBC (May 2, 2023), *available at* <https://www.bbc.com/news/world-middle-east-35806229>

<sup>913</sup> CFR, Global Conflict Tracker, *available at* <https://www.cfr.org/global-conflict-tracker/conflict/conflict-syria>

<sup>914</sup> Heydemann, Steven. Assad's normalization and the politics of erasure in Syria. Brookings Institute. (January 13, 2022) *available at* <https://www.brookings.edu/articles/assads-normalization-and-the-politics-of-erasure-in-syria/>

<sup>915</sup> CFR, Global Conflict Tracker, *available at* <https://www.cfr.org/global-conflict-tracker/conflict/conflict-syria>

## *Yemen Case Study*

### Civil Unrest

Yemen is a country that has experienced a mix of civil unrest and authoritarian rule in its recent history. It was ruled by some combination of imams and colonial powers up until the 1960s, when the Yemen Arab Republic and People's Democratic Republic of Yemen were formed, effectively dividing the country into north Yemen and south Yemen.<sup>916</sup> Relations between north and south Yemen were tumultuous during the 1960s and 1970s, often resulting in violent conflict.<sup>917</sup> In 1989, Ali Abdullah Saleh and Ali Salem al-Beidh, the leaders of north and south Yemen respectively, made a back room deal to unify the country politically with Saleh becoming president and al-Beidh becoming vice president.<sup>918</sup>

President Saleh ruled from 1990 until 2011. Throughout that time, he consolidated power and relied only on a small circle of close confidants and allies, and prominent government positions were filled based primarily on tribal and kinship ties.<sup>919</sup> The result was a “‘neo-patrimonial patronage system’ that rewarded a small group of elites.”<sup>920</sup> Yemen experienced multiple violent internal conflicts during President Saleh's tenure as head of state.<sup>921</sup> Civil war broke out in 1994,<sup>922</sup> and the early 2000s saw the rise of armed resistance to the central government on multiple fronts—the Houthis in the north (which President Saleh had previously supported),<sup>923</sup> tribes in the south, and Al-Qaeda in the Arabian Peninsula in the south and east.<sup>924</sup> Through all of this instability, the Saleh administration did not hesitate to alienate factions throughout the country for strategic or political reasons. The government taxed residents of

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<sup>916</sup> See Yemen: A Brief Background, available at <https://unfoundation.org/what-we-do/issues/peace-human-rights-and-humanitarian-response/yemen-a-brief-background/>; Paul Williams, et. al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int'l and European L. 4, 6 (2017).

<sup>917</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int'l and European L. 4, 6 (2017).

<sup>918</sup> See *id.*

<sup>919</sup> See *id.*

<sup>920</sup> See *id.* at 6-7.

<sup>921</sup> See Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, Arab Center Washington D.C. (Feb. 19, 2021), available at <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>

<sup>922</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int'l and European L. 4, 6 (2017).

<sup>923</sup> See April Longley Alley, *Tracking the 'Arab Spring' Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 76 (2013).

<sup>924</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int'l and European L. 4, 7 (2017); Kali Robinson, *Yemen's Tragedy: War, Stalemate, and Suffering*, Council on Foreign Relations (May 1, 2023), available at <https://www.cfr.org/backgrounder/yemen-crisis#chapter-title-0-2>.



different regions at different rates; “encouraged the rise of new tribal sheiks in [President Saleh’s] preferred territory, the highland, while ignoring and challenging the formal tribes;” and abandoned political alliances.<sup>925</sup> To make matters more challenging, income generated by oil producing assets began to decline in the mid-2000s, adding economic pressures to a government that was becoming increasingly autocratic.<sup>926</sup>

The challenges facing the Saleh government came to a head in 2011 when Yemeni youth and civil society inspired by pro-democracy protests in Tunisia took to the streets to demand reform as part of what became known as the “Arab Spring” throughout the region.<sup>927</sup> These uprisings in Yemen were seen by some at the time as a key turning point in the country’s political history.<sup>928</sup> When it became clear that President Saleh would struggle to remain in power in the face of the protests and related civil unrest, the Gulf Cooperation Council (GCC)—a multilateral alliance comprised of states in the Persian Gulf region—intervened to broker the “Gulf Initiative,” which ultimately led to President Saleh resigning from office and ceding power to his then-vice president, Abd-Rabbu Mansour Hadi.

### The Gulf Initiative

The Gulf Initiative resulted in an agreement that was negotiated and signed by President Saleh and several prominent political leaders in the presence of the secretary-general of the GCC and minister of foreign affairs of the United Arab Emirates.<sup>929</sup> It set forth a process for the transition to a new government through a series of concrete steps:

- President Saleh would request the opposition “to form a government of national unity with 50 per cent representation from either side.”<sup>930</sup>

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<sup>925</sup> See Amira Ahmed Elsayed Abdelkhalek, *The Role of Gulf Cooperation Council in Conflict Management, 1981–2019: A Comparative Study*, 9(1) *Contemporary Review of the Middle East* 100, 108-109 (2022); April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 *J. Dem.* 74, 76-77 (2013).

<sup>926</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 *J. Dem.* 74, 76-77 (2013).

<sup>927</sup> See *id.* at 77.

<sup>928</sup> See, e.g., Laura Silvia Battaglia, “Yemen’s Uprising Was Magical, Spiritual, Powerful”, *Aljazeera* (Apr. 27, 2021), <https://www.aljazeera.com/features/2021/4/27/yemens-uprising-was-magical-spiritual-powerful>; Abdulrahman al-Ansi, et. al., *Yemen “Arab Spring” Unity Torn Asunder by Hunger and War*, *Reuters* (Jan. 28, 2021), available at <https://www.reuters.com/article/us-yemen-uprising-anniversary/yemen-arab-spring-unity-torn-asunder-by-hunger-and-war-idUSKBN29X0TX/>; Beth McKernan, *Ten Years After the Arab Spring, Yemen Has Little Hope Left*, *The Guardian* (Feb. 1, 2021), available at <https://www.theguardian.com/world/2021/feb/01/yemen-arab-spring-ten-years-war-cholera-coronavirus-famine>; *Yemen’s Saleh Agrees to Transfer Power*, *Aljazeera* (Nov. 24, 2011), available at <https://www.aljazeera.com/news/2011/11/24/yemens-saleh-agrees-to-transfer-power-2/>.

<sup>929</sup> The agreement (GCC Agreement) available at <https://www.peaceagreements.org/view/1401>.

<sup>930</sup> GCC Agreement p. 1.

- On the 29th day after execution of the agreement, the parliament would “adopt laws granting immunity from legal and judicial prosecution to the president and those work worked with him during his time in office.”<sup>931</sup>
- On the 30th day after execution of the agreement, and after the adoption of a presidential immunity law, president Saleh would tender his resignation, and vice president Hadi would be appointed president.<sup>932</sup>
- The newly-appointed president Hadi would then call for presidential elections within 60 days and establish a constitutional committee to “oversee the preparation of a new constitution” to be submitted to and approved by popular referendum.<sup>933</sup> GCC member states, the United States, the EU, and Russia would all “be witness to the implementation” of the agreement.<sup>934</sup>

The agreement was accompanied by a concrete transition plan, the “Agreement on the implementation mechanism for the transition process in Yemen in accordance with the initiative of the Gulf Cooperation Council” (GCC Transition Plan).<sup>935</sup> The GCC Transition Plan included two “phases” for the transition period: (1) execution of the agreement until the inauguration of the president following early elections and (2) inauguration of the new president until general elections were held under a newly adopted constitution two years later.<sup>936</sup>

- The first phase was geared towards ensuring the interim government could administer peace and security during the transitional period. It provided concrete steps for the formation of the transitional government;<sup>937</sup> obligated the transitional government to “take its decisions by consensus” and ensure peace, stability, and the rule of law;<sup>938</sup> set forth the powers of the vice president up until formal elections could be held;<sup>939</sup> established a “Committee on Military Affairs for Achieving Security and Stability” to effectively oversee the cessation of armed conflict;<sup>940</sup> and defined the process to hold

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<sup>931</sup> *Id.* p. 3.

<sup>932</sup> *Id.* p.4.

<sup>933</sup> *Id.* pp. 5-6.

<sup>934</sup> *Id.* p. 10.

<sup>935</sup> The GCC Transition Plan is available at: <https://peacemaker.un.org/yemen-transition-mechanism2011>.

<sup>936</sup> GCC Transition Plan p. 7.

<sup>937</sup> *See id.* pp. 10-11. The GCC Transition Plan contemplated as a priority women’s representation in government by requiring that “due consideration shall be given to the representation of women” in the nomination of candidates for the transitional government, but it fell short of actually apportioning any government seats for women. *See id.* ¶ 10(a).

<sup>938</sup> *See id.* pp. 12-13.

<sup>939</sup> *See id.* pp. 14-15.

<sup>940</sup> *See id.* pp. 16-17

early presidential elections pursuant to which vice president Hadi would be the only nominee.<sup>941</sup>

- The second phase established a “Conference for National Dialogue for all forces and political actors, including youth, the Southern Movement, the Houthis, other political parties, civil society representatives and women”<sup>942</sup> (National Dialogue Conference or NDC). The National Dialogue Conference was charged with “discuss[ing]” eight core issues, including: (1) the establishment of a constitutional drafting commission within six months of the conclusion of the NDC’s work that would draft a new constitution in the subsequent three months, (2) “the structure of the State and political system,” (3) “the issue of the South,” (4) “the causes of tension in Saada,” (5) “steps towards building a comprehensive democratic system,” (6) steps to achieve “national reconciliation and transitional justice,” (7) “adoption of legal and other means to strengthen the protection and rights of vulnerable groups,” and (8) priorities with regard to “reconstruction and sustainable economic development in order to create job opportunities and better economic, social and cultural services for all.”<sup>943</sup> The second phase provided further that the constitutional drafting commission would be formed within six months of the conclusion of the NDC’s work, and it would in turn prepare a new draft constitution within three months of its establishment.<sup>944</sup> The second phase also included the parameters of the organization of elections under the new constitution and a dispute resolution process under the GCC Agreement and Transition Plan.<sup>945</sup>

The Gulf Initiative was meant to restore stability to a country experiencing significant civil unrest and internal political pressures leading towards a broader violent conflict. Indeed, the agreement expressly acknowledged that it was meant to “fulfil the aspirations of the Yemeni people for change and reform.”<sup>946</sup> And it set forth a process that, on paper, offered a mechanism for transferring power with a transition plan and the support of the international community. Yemen was “the only country to have exited the Arab world’s 2011 uprisings by means of a negotiated settlement and a transition plan that makes provision for a national dialogue to guide the country’s political future.”<sup>947</sup> However, despite the high aspirations of the Gulf Initiative, its underlying agreement drew skepticism as a compromise among the governing elites that was not

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<sup>941</sup> See *id.* p. 18.

<sup>942</sup> See *id.* p. 20. The Transition Plan required women to be “represented in all participating groups.” *Id.*

<sup>943</sup> *Id.* p. 21.

<sup>944</sup> See *id.* p. 22.

<sup>945</sup> See *id.* pp. 23-25. The Transition Mechanism also included a number of “Concluding Provisions,” including that “Women shall be appropriately represented in all of the institutions referred to in this Mechanism,” and calling for support and assistance from both the Yemeni government and international community. See *id.* ¶ 26.

<sup>946</sup> See *id.*, Preamble.

<sup>947</sup> April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 74 (2013).

reflective of the youth and civil society who had risen up in protest and immunized an autocratic president from prosecution.<sup>948</sup> Indeed, the transitional government that was installed was largely run by many of the same “old-regime elites,” including many of president Saleh’s allies and family, effectively giving them a “role in reforming the very system that they helped to create.”<sup>949</sup>

### The National Dialogue Conference

The NDC began its two-year effort to reform Yemen’s constitution in March 2013.<sup>950</sup> It was composed of 565 delegates representing various constituencies, including established political parties and social groups.<sup>951</sup> The NDC also apportioned participatory roles for women and youth. Women comprised approximately 30% of delegates,<sup>952</sup> while youth comprised about 20% of the delegates.<sup>953</sup> The National Dialogue Conference was structured to divide delegates into nine working groups and a plenary who discussed the issues enumerated in the GCC Transition Plan and ultimately presented 1,800 recommendations to the constitution-drafting committee.<sup>954</sup> The constitution-drafting committee in turn drafted a constitution on the accelerated three-month timeline set forth in the GCC Transition Plan, but the draft constitution was in the end not adopted.

The NDC was ultimately unable to adequately address the diverse interests of the Yemeni public in a manner that would appease “Yemen’s many factions.”<sup>955</sup> Two main sticking points were the “southern issue” and the distribution of power within a potential system of federalism that the delegates evaluated as a model to transition away from the centralized government former president Saleh had built over the years.<sup>956</sup> As to the “southern issue,” many southern activists took a hard line in demanding independence and refused to participate in the NDC, while the minority that did participate was only willing to consider a two-entity federalist

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<sup>948</sup> See *id.* at 76-78; Amira Ahmed Elsayed Abdelkhalek, The Role of Gulf Cooperation Council in Conflict Management, 1981–2019: A Comparative Study, 9(1) Contemporary Review of the Middle East 100, 113 (2022).

<sup>949</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 75, 79 (2013).

<sup>950</sup> See *id.* at 81.

<sup>951</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen’s Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int’l and European L. 4, 7-8 (2017).

<sup>952</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 81 (2013).

<sup>953</sup> See *id.*

<sup>954</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen’s Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int’l and European L. 4, 7-8 (2017).

<sup>955</sup> See Kali Robinson, *Yemen’s Tragedy: War, Stalemate, and Suffering*, Council on Foreign Relations (May 1, 2023), <https://www.cfr.org/background/yemen-crisis#chapter-title-0-2>.

<sup>956</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 82 (2013); Paul Williams, et. al., *A Legal Perspective on Yemen’s Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int’l and European L. 4, 9-10 (2017).

system.<sup>957</sup> With regard to issues relating to federalism, the “old-regime elites” undermined the possibility of decentralizing the government to empower regions with greater autonomy through a system of checks and balances on the central government because of financial interests they had that decentralization would harm.<sup>958</sup> Some commentators posit that the NDC evaluated the possibility of a federalist system through a lens that was too reliant on models of federalism from western states with more advanced and established systems of government rather than models from states that were less developed and more similarly situated to Yemen.<sup>959</sup>

As a practical matter, the NDC may have simply been too rushed. Some experts contend that the 1,800 recommendations presented to the constitution-drafting committee were too vague to realistically result in constitutional provisions that would be legally cognizable and politically acceptable by the population.<sup>960</sup> Similarly, the NDC was forced into a rushed timeline to produce the necessary inputs for a new constitution, and the constitution-drafting committee was also operating on an expedited three-month timeline. In the meantime, the transitional government struggled to actually govern effectively, undermining public confidence in the transition and allowing anti-government groups like the Houthis to become stronger.<sup>961</sup> Instead of that rushed timeline, a “phased approach” may have been more effective.<sup>962</sup> For example, an interim constitution could have been drafted to provide a legal basis for the transitional government while the NDC and constitution-drafting committee took the time they needed to assemble a new constitution with sufficient buy-in.<sup>963</sup> Finally, there was no “backup plan” in place in the event the NDC were to fail (and most would agree that it did).<sup>964</sup>

Despite its shortcomings, the NDC had some positive takeaways. For example, the NDC succeeded in providing women with a voice in the constitution-drafting process (even if just 30% of delegates were women—*i.e.*, lower than the actual percentage of women in the Yemen population). The conference also brought together parties that had been in violent or political conflict for years, including political parties, elites, civil society, and members of prominent

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<sup>957</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 75, 85 (2013).

<sup>958</sup> See *id.* at 79.

<sup>959</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int'l and European L. 4, 9-10 (2017) (“During the National Dialogue Conference and Yemen's constitution-drafting process, there was greater showcasing of highly developed federal systems like those of Germany and Canada than more contemporary federal States as examples to draw from.”).

<sup>960</sup> See *id.* at 12.

<sup>961</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 81 (2013).

<sup>962</sup> See Paul Williams, et. al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33(84) Utrecht J. Int'l and European L. 4, 18 (2017).

<sup>963</sup> See *id.*

<sup>964</sup> See April Longley Alley, *Tracking the ‘Arab Spring’ Yemen Changes Everything... and Nothing*, 24 J. Dem. 74, 75 (2013).

social groups.<sup>965</sup> And the NDC may not have functioned at all were it not for pressure from the international community that was able to keep elites in check to a certain degree through threat of sanctions or the withdrawal of foreign aid.<sup>966</sup>

### Further International Efforts in Support of Yemen's Attempted Transition

Yemen became embroiled in a violent internal conflict in 2014 not long after the constitutional dialogue process broke down. In September 2014, forces aligned with former-president Saleh took to arms and seized parts of Yemen, including Sana'a (the capital).<sup>967</sup> An international coalition of Saudi Arabia, Bahrain, Egypt, Jordan, Kuwait, Morocco, Senegal, Sudan, the UAE, and Qatar intervened in March 2015 to support the Yemeni government by providing arms and intelligence and conducting air strikes.<sup>968</sup> President Hadi struggled to govern in a normal capacity, being placed under house arrest more than once and going in and out of exile.<sup>969</sup> Former-president Saleh was killed in a Houthi attack in 2017 after a delicate alliance he had built with the Houthis collapsed when he expressed openness to peace discussions.<sup>970</sup> The armed conflict resulted in a humanitarian crisis "reported as one of the worst in the world" and "described as one of the largest famines in decades."<sup>971</sup>

The international community has tried, with limited success, to intervene at various points during Yemen's current civil war. For example, the United Nations brokered peace talks between the Yemeni government and Houthis in Stockholm, Sweden in 2018. The "Stockholm Agreement" was negotiated to achieve three main objectives: (1) establish a ceasefire in the port city of Hodeidah; (2) facilitate a prisoner exchange; and (3) build towards peace in Taiz, a governorate in Yemen suffering especially acute violence at the time.<sup>972</sup> The agreement generated initial optimism for the potential of a permanent peace, but it proved difficult to

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<sup>965</sup> See Mareike Transfield, *Yemen: GCC Roadmap to Nowhere*, Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, at 6 (May 7, 2014), available at <https://www.swp-berlin.org/en/publication/yemens-transformation-process>.

<sup>966</sup> See *id.* at 1-2.

<sup>967</sup> See Haydee Dijkstal, *Yemen and the Stockholm Agreement: Background, Context, and the Significance of the Agreement*, Am. Soc. Int'l L. (May 31, 2019), available at <https://www.asil.org/insights/volume/23/issue/5/yemen-and-stockholm-agreement-background-context-and-significance>.

<sup>968</sup> See *id.*

<sup>969</sup> See *id.*

<sup>970</sup> See *id.*

<sup>971</sup> See *id.*

<sup>972</sup> The Stockholm Agreement available at [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2018\\_1134.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2018_1134.pdf).

implement.<sup>973</sup> The ceasefire was generally not respected by the parties to the agreement, as both sides reportedly breached its terms.<sup>974</sup> Similarly, the prisoner swap did not come to fruition within the 20-day deadline provided by the agreement (though both sides unilaterally released prisoners after the deadline passed).<sup>975</sup> And the Taiz “understanding”—a vaguely worded provision of the agreement to establish a “joint committee” tasked with submitting a “report on its work to the upcoming [U.N.-backed] consultations”<sup>976</sup>—failed to result in any tangible progress towards peace in Taiz.<sup>977</sup> Ultimately, while the Stockholm Agreement succeeded in avoiding some violence, and it resulted in the release of some prisoners, its impact proved to be limited.

Similarly, in April 2022, the U.N. brokered a ceasefire between the Houthis and Yemeni government that was initially just two-months but was extended multiple times by the parties (Truce Agreement). “Recognizing the urgent need to de-escalate violence and to address humanitarian and economic needs,” the stated purpose of the Truce Agreement was to “provide a conducive environment for a peaceful settlement of the conflict.”<sup>978</sup> The parties also agreed that the agreement would not be “a pause to be used by the parties to regroup and resume military operations.”<sup>979</sup> The Truce Agreement was just one page in length and has been described as “an informal, self-policed agreement by the parties to stop fighting.”<sup>980</sup> Extensions of the truce generally favored demands made by the Houthis, who called for the lifting of trade restrictions in Hodeidah, payment of civil servant salaries in areas they were controlling, and the addition of

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<sup>973</sup> See Ibrahim Jalal, *Yemen's Stockholm Agreement one year on: Imaginary progress?*, Middle East Institute (Jan. 22, 2020), available at

<https://www.mei.edu/publications/yemens-stockholm-agreement-one-year-imaginary-progress>.

<sup>974</sup> See Haydee Dijkstal, *Yemen and the Stockholm Agreement: Background, Context, and the Significance of the Agreement*, Am. Soc. Int'l L. (May 31, 2019), available at

<https://www.asil.org/insights/volume/23/issue/5/yemen-and-stockholm-agreement-background-context-and-significance>.

<sup>975</sup> See Ibrahim Jalal, *Yemen's Stockholm Agreement one year on: Imaginary progress?*, Middle East Institute (Jan. 22, 2020), available at

<https://www.mei.edu/publications/yemens-stockholm-agreement-one-year-imaginary-progress>.

<sup>976</sup> See Stockholm Agreement, Statement of Understanding on Ta'iz.

<sup>977</sup> See Ibrahim Jalal, *Yemen's Stockholm Agreement one year on: Imaginary progress?*, Middle East Institute (Jan. 22, 2020), available at

<https://www.mei.edu/publications/yemens-stockholm-agreement-one-year-imaginary-progress>.

<sup>978</sup> The Truce Agreement available at

[https://osesgy.unmissions.org/sites/default/files/un\\_truce\\_initiative\\_final\\_en.pdf](https://osesgy.unmissions.org/sites/default/files/un_truce_initiative_final_en.pdf).

<sup>979</sup> See Truce Agreement, Preamble.

<sup>980</sup> See Peter Salisbury & Veena Ali-Khan, *Toward Open Roads in Yemen's Taiz*, Int'l Crisis Group (May 19, 2022), available at

<https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/toward-open-roads-yemens-taiz>. As discussed *infra*, shortly after the truce, President Hadi resigned, and an eight-man “Presidential Leadership Council” took power with the support of Saudi Arabia and the UAE. *How Huthi-Saudi Negotiations Will Make or Break Yemen*, Int'l Crisis Group (Dec. 29, 2022), available at

<https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/b089-how-huthi-saudi-negotiations-will-make-or-break-yemen>.

new destinations for flights from the airport in Sana'a.<sup>981</sup> The truce expired in October 2022, but channels of communication between the Houthis and Saudi Arabia remained open.<sup>982</sup> Since October 2022, discussions have continued between the Houthis and Saudis with Oman serving as a mediator, and the sides recently announced a commitment to steps towards a U.N.-led peace process.<sup>983</sup> Some consider the truce to have been one-sided, with the Houthis coming away as the primary benefactors.<sup>984</sup> Indeed, the implementation of the truce and discussions that followed effectively cut the Yemeni government out of negotiations with the Houthis, leaving Saudi Arabia to chart a course for a future Yemen. However, the truce did result in a significant reduction in violence and casualties, and it set the stage for what could ultimately amount to a permanent peace.<sup>985</sup>

### The Presidential Leadership Council

In April 2022, shortly after the U.N.-brokered truce discussed above, president Hadi transferred his powers to a Presidential Leadership Council (PLC) under pressure from the Saudis and Emiratis.<sup>986</sup> The PLC, which is the current Yemeni central government recognized by the U.N. and most of the international community, is composed of representatives from a range of groups allied with either the Saudis or Emiratis and is “more representative of various factions than Hadi and his entourage were.”<sup>987</sup> However, the members of the PLC are not themselves allied with each other.<sup>988</sup> The PLC is furthermore effectively an interim government that is the surrogate of regional powers. Indeed, the “decision to create the eight-member council was taken in Riyadh, under the guise of negotiations among all the Gulf Arab states. Yemenis were cut out of the deliberations leading to Hadi’s ouster and the council’s formation, robbing the body of political agency from its inception.”<sup>989</sup>

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<sup>981</sup> *See id.*

<sup>982</sup> *See id.*

<sup>983</sup> *See Yemen Warring Parties Commit to Ceasefire, UN-Led Peace Process, Says Envoy*, Al Jazeera (Dec. 23, 2023), available at <https://www.aljazeera.com/news/2023/12/23/yemen-warring-parties-commit-to-ceasefire-un-led-peace-process-says-envoy>.

<sup>984</sup> *See Ibrahim Jalal, One Sided and Incomplete, Yemen’s Truce Faces Implementation Hurdles as Extension Deadline Nears*, Middle East Institute (Jul. 29, 2022), available at <https://www.mei.edu/publications/one-sided-and-incomplete-yemens-truce-faces-implementation-hurdles-extension-deadline>.

<sup>985</sup> *See id.*

<sup>986</sup> *See Veena Ali-Khan, Yemen’s Troubled Presidential Leadership Council*, Int’l Crisis Group (May 4, 2023), available at <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/yemens-troubled-presidential-leadership-council>.

<sup>987</sup> *Id.*

<sup>988</sup> *See id.*

<sup>989</sup> *See id.* It is worth noting that in just the last couple of months, Yemen has become ensnared in the ongoing conflict in Israel and the occupied Palestinian territories. *See, e.g., Andrew England, Houthi Militancy Drags Troubled Yemen Back Into Conflict*, Financial Times (Feb. 14, 2024), available at



## *Best Practices and Lessons Learned for Iran*

### Influence of Foreign Actors

All four case studies demonstrate how the international community can influence a transition (for better or worse). Key lessons learned are as follows:

- It is important to seek out support from international partners with interests aligned with objectively democratic goals. While it is likely naïve to expect international partners to provide support in a way that does not serve their interests, such interests should be linked to an independent democratic transitional process and not purely economic or political interests.
- International expertise can also be helpful in setting up transitional justice mechanisms, for example, by creating an international tribunal or a mixed national-international tribunal in the event that domestic courts are unwilling or unable to prosecute authorities and conduct fair and impartial processes.
- International support should also be clearly defined by achievable objectives, including through mechanisms to ensure effective implementation. There can be a natural urge to sign treaties or agreements in order to neutralize an armed conflict or stabilize civil unrest, but such instruments should be developed carefully with buy-in from all parties and drafted in a way that they can be enforced.
- In the situation of a foreign occupier, its mandate must be clearly defined, its actions must be within the limits of the law of occupation at a minimum, and any process should to the extent possible be locally driven and with adequate information and knowledge of cultural nuances.

### Transitions Driven by New Stakeholders, not the Political Establishment

The case studies highlight the importance of a transition in Iran being driven by new stakeholders, not the political establishment. This includes:

- Any interim government should be run by suitable candidates that are representative of the transition itself. Establishment governing elites cannot simply rebrand and remain in their same positions on an interim basis if there is to be public confidence in the process.

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<https://www.ft.com/content/647f37b7-f3e4-4f7b-90d4-db9dc7fbc41c>. The Houthis have seized on geopolitical headwinds arising from that conflict in support of Palestine, a position that appears to be garnering them popularity in Yemen and the region. *See id.* The extent to which Yemen's involvement in the Israel-Palestine conflict affects Yemen's transition is still to be determined but is an area of potential future research and analysis.

- Relatedly, minorities and historically marginalized groups should have a role in the transitional process—both any interim government and constitutional dialogue—in order to ensure fairness and buy-in across society.
- Granting immunity to certain members of the political establishment can be a political tool to incentivize the relinquishment of power from an autocracy to a more representative form of government, but it risks undermining public confidence in the process. To mitigate such a risk, a transition could employ transitional justice mechanisms that offer alternative means of achieving accountability and justice.

### Best Practices and Lessons Learned from Specific Case Studies

- Afghanistan

The failures of transitional justice in Afghanistan offer several important insights. First, there must be security for there to be any sustained transition. Insecurity in Afghanistan undermined the democratic processes, the PRTs development work, and overall economic development in the country. The U.S. refusal to negotiate with the Taliban and their exclusion from the Bonn Conference is sometimes referred to as the “original sin” in this respect. While it is impossible to say that any such negotiations would have been successful, it is certain that the absence of any negotiations forced the Taliban to sustain their violence to gain any voice. The dependency of the Afghan National Defense and Security Forces on the U.S. military and support, despite billions of dollars spent and two decades of work, also meant that key institutions collapsed within days after the U.S. withdrawal and Taliban advancement. Foreign military support can be very helpful in providing security guarantees, but its efforts should be focused on helping stabilize the country and then quickly shifting to a process led by civilians to build a self-sustaining peace and security, which can take many years.<sup>990</sup>

Second, security is very unlikely to happen without the establishment of a system of governance that can promote stability. The transitional plan that was established in Afghanistan disregarded the cultural nuances and the reality of the political landscape in the country. It effectively excluded major actors from the negotiations. In particular, representatives from civil society and marginalized groups were not invited to the Bonn Conference to provide their perspectives and support for the structure of the transition. The electoral law in Afghanistan was flawed by design and led to a weak parliament and weak political parties. The constitution

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<sup>990</sup> A Post-War Transition That Works: A Lesson for Afghanistan...from Kosovo, Linwood Ham, USIP Blog, October 21, 2014, *available at* <https://www.usip.org/blog/2014/10/post-war-transition-works-lesson-afghanistan-kosovo>.

further undermined the history of tribal authority and culture in Afghanistan by establishing a highly centralized government with extensive powers to the president, without much influence outside of Kabul. The power-sharing arrangements exacerbated division and disagreement, instead of finding a way to build agreement over the competing perspectives.

Third, while some level of amnesty is almost inevitable in any transitional process, security and stability is unlikely to happen if a country in transition does not deal with its past atrocities. Prosecution of perpetrators, truth-seeking, and reparations for victims may provide victims with a sense of justice, acknowledgement, and remedy. It may also contribute to reconciliation, peace, and truth in society. Establishing vetting procedures for public officials may further provide the public with some assurances that the people in power are not the same people that committed atrocities against them and that there is no corruption or impunity for the gravest crimes committed. It may also help to foster public support for the transitional government.

- Iraq

ORHA's challenges in Iraq highlight the importance of proper prior planning for transitional governance arrangements. As noted by the USIP, common challenges for transitional governance are "exacerbated by ... the failure to move fast enough to stabilize a country and begin reconstruction and ... the failure to provide sufficient resources and personnel guided by a strong mandate at the mission's outset."<sup>991</sup> The needs and conditions on the ground must be assessed. Potential risks, including security risks, and rapid changes to the situation must be anticipated and a plan must be set up to mitigate those risks. Already at the planning stage, a minimum technical capacity and experience is necessary. Therefore, adequate resources and personnel should be provided. Moreover, a transitional government will often have to rely on existing bureaucracy structures for its functioning but bring in new people as needed to overcome corruption problems.<sup>992</sup> It will therefore be important to identify and obtain resources to quickly set up ministries and other key institutions necessary for the continuation of state administrative functions. As demonstrated by ORHA's experience, an interim government should also plan for engagement with the public to manage their expectations and establish wider consensus, e.g., through creating public forums for wider discussions.<sup>993</sup>

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<sup>991</sup> For best practices on effective transitional governance, see *Transitional Governance: From Bullets to Ballots*, USIP, June 1, 2006, available at <https://www.usip.org/publications/2006/06/transitional-governance-bullets-ballots>.

<sup>992</sup> For best practices and recommendations for how to establish an interim government as part of negotiated transitions from conflict or authoritarian rule, see *Interim Governments: Lessons and Guidelines*, IFIT Practice Brief, November 2020, available at <https://ifit-transitions.org/wp-content/uploads/2021/03/Interim-Governments-Lessons-and-Guidelines-1.pdf>.

<sup>993</sup> See *id.*

The CPA's experience of economic reconstruction further highlights the importance of establishing a clear mandate and vision for the interim governance and not to go beyond that mandate. In the context of a foreign occupier, the laws of occupation must be respected.

While access to immediate funds is important for efficient reconstruction efforts, there must be checks and balances in place to avoid procurement corruption, bribery, and fraud. For example, the interim government might establish a framework for transparent and efficient competitive bidding and adequate oversight and control, with technical support from international organizations such as the OECD.<sup>994</sup> Anti-corruption work must also be “mainstreamed” into all functions of government and adequate training must be provided for all staff. As noted above, there are no quick fixes or shortcuts around this. This is particularly important for countries such as Iraq and Iran that rely heavily on rich oil and mineral resources, where mismanagement, side-payments and corruption has been a part of government policy for decades.

Economic reconstruction should include long-term development programs. As evident from the Iraqi experience, private sector growth and increased foreign investment requires more than removing barriers and regulatory reforms. It requires active assistance, training, capacity-building, investments, and small business loans, carried out with the best interest of the population in mind. Learning from other case studies can be insightful, but here it is also important to have in mind that there is no blueprint for an economic transition. Public consultation and support will also be crucial to ensure effective reforms.

The experiences of the de-Ba'athification and the dismantling of the Iraqi army provides many insights on how a regime change should not expand into a top-down collective punishment that impedes an efficient transition and replaces efforts to promote real justice and accountability. The experiences also highlight the importance of understanding the cultural nuances and the specific contexts of each transition, including a deep understanding of how the authoritarian regime operated and gained influence.

Much of the violence and conflicts in Iraq's modern history has been a result of the country's sectarian divisions and tensions between different religious and ethnic groups, both under Saddam's rule, as explained above, as well as after the U.S. invasion. Consociational arrangements, although clearly not sufficient to address deep sectarian divisions, may still help build bridges and promote government stability in a country with major internal divisions.

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<sup>994</sup> See Preventing Corruption in Public Procurement, OECD, 2016, *available at* <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>.

- Syria

The Arab Spring proved to be a catalyst for change across the region. The change it precipitated in Syria was a decade-long civil war that does not yet have an end in sight. Domestic and international efforts have been made to intervene and transition Syria and the Assad regime from an autocracy to a democracy in some form. There are three primary takeaways that may explain some of the failure of a transition in Syria: (1) failure of any opposition to coalesce on the ground, (2) heavy influence of foreign intervention, and (3) the failure of the opposition forces and international community to agree upon a strategy of either wholesale change or working within the existing infrastructure for the sake of getting a deal done.

Syria does not have a single opposition force or unifying opposition leader to galvanize the movement. Instead, there are multiple opposition groups, each with its own interests. For example, there is a pro-Russia (but anti-Assad) group as well as a pro-American group, along with anti-western groups. Furthermore, these opposition forces have not necessarily been able to operate on the ground in Syria. With the civil war displacement as well as the common exile of anti-Assad political leaders, most of the opposition groups are operating outside of or around the fringes of the Syrian borders. It is challenging to lead an effective movement without a coalesced opposition movement on the ground to galvanize support and make grass roots efforts at change.

As discussed above, the civil war in Syria devolved from a domestic conflict to a proxy war by which global powers intervened and fought proxy battles. Furthermore, the international alliances shifted and did not provide constant support to particular parties.

Finally, there were two primary paths for Syria to take. The first is a complete removal of Assad, including all of his affiliates in an effort to put Syria on the path to democracy. The second was to find some middle ground with Assad in order to find some resolution of the civilians suffering during the civil war and somehow modify the existing violent authoritarian regime. This bifurcation is what caused the Geneva Communique to fall apart because all proposals were predicated on Assad's removal. As such, Assad refused to participate. An alternative path could have included certain immunities granted to Assad, as was done in Yemen. However, there was concern and outrage that the granting of such immunities to Assad would be an endorsement of or forgiveness for Assad's brutal policies, including the use of chemical weapons.

- Yemen

The transition that has occurred in Yemen in recent years falls somewhere between the “mass mobilization” and “foreign intervention” categories of transition. President Saleh left office by stepping down because of political pressures relating to the Arab Spring (mass mobilization), and the implementation of the transition since president Saleh’s resignation has been defined in a significant way by the direct influence of countries like Saudi Arabia and its allies (foreign intervention). Accordingly, although Yemen presents a case study that is arguably reflective of an unsuccessful democratic transition in light of the challenges and shortcomings of its transitional process, there are best practices and lessons learned that are potentially on-point for a number of different scenarios that a future Iran could be faced with.

Yemen offers insights into how a transitional process can be designed through governing agreements or frameworks. The Gulf Initiative and NDC presented mechanisms to facilitate a full transition to a democratic form of government representative of the diversity of interests that exists in Yemen. To the extent a future Iran can be designed by a similar legal framework, best practices and lessons from the Yemeni experience may be applicable, including the following:

- A transition must provide both *de jure* and *de facto* authority to an interim government such that it can effectively govern. This means more than just maintaining peace and stability. The interim government should be given effective governing powers through an interim constitution or similar governing framework to ensure there is sufficient time to work through an effective transitional process.
- To the extent a national dialogue is a useful tool to achieve a successful transition, it should have enough time to serve its function. This means allowing for sufficient time to craft the legal framework for a new government that supports a diversity of interests and backgrounds.
- Any national dialogue process should also be designed in a way that participants can provide detailed and concrete proposals developed by focusing on true priorities. Procedural requirements could be built into such a mechanism—*e.g.*, through a filtering process where ideas are developed by subcommittees, refined and recommended by committees with certain discrete criteria for specificity in its proposals, and then approved by a plenary or larger body.
- To the extent foreign models are of interest as comparative examples to draw from, an effective transitional process may be most effective considering models that are from

comparable country contexts (*e.g.*, with comparable styles of government, economic output, civic engagement, etc.). Caution should be taken to avoid looking to so-called “developed” countries for inspiration as such models may not be on-point in the early stages of a democratic transition.